



# THE CITY OF WHITTIER

*Gateway to Western Prince William Sound*

P.O. Box 608 • Whittier, Alaska 99693 • (907) 472-2327 • Fax (907) 472-2404

**WHITTIER CITY COUNCIL  
REGULAR MEETING  
TUESDAY, SEPTEMBER 21, 2021  
AT 7:00 PM  
COUNCIL CHAMBERS  
3<sup>rd</sup> fl. PUBLIC SAFETY BUILDING**

Page #

**AGENDA**

**1. CALL TO ORDER**

**2. OPENING CEREMONY**

**3. ROLL CALL**

- A. Council Members Present
- B. Administration Present

**4. APPROVAL OF MINUTES**

- 3 A. August 17, 2021 – Regular Meeting
- 8 B. September 7, 2021 – Special Meeting

**5. APPROVAL OF REGULAR MEETING AGENDA**

**6. MAYOR'S REPORT**

- 12 A. Mayor Report – Dave Dickason
- B. Vice Mayor Report – Peter Denmark

**7. MANAGER'S REPORT**

- 13 A. City Manager and Director Reports
- B. Attorney Comments

**8. COMMISSION/COMMITTEE REPORTS**

- A. Planning Commission
- B. Port & Harbor Commission
- C. Parks & Recreation Committee
- D. Whittier Community School
- E. Prince William Sound Aquaculture Corp.
- F. Regional Citizen's Advisory Council

**9. CITIZEN'S COMMENTS ON AGENDA ITEMS NOT SCHEDULED FOR PUBLIC HEARING**

**10. PUBLIC HEARINGS (NON-ORDINANCE)**

29 **11. ORDINANCE**

**A. Public Hearing (2<sup>nd</sup> reading)**

Ordinance #03-2021 – An Ordinance Of The City Council Of The City Of Whittier, Alaska, Amending The Water And Wastewater Tariff And Providing For A 3.0% Increase To All Rates And Charges Effective January 1, 2022 Plus A 5.0% Increase Effective October 1, 2022, And Providing For Automatic Annual Adjustments Effective With The First Billing Cycle Each Year Thereafter, By An Amount Equal To The Three Previous Full Years' Average Increase In The CPI

**12. RESOLUTIONS**

35 A. Resolution #12-2021 – A Resolution Of The City Of Whittier, Alaska Creating The Whittier City Council Policy And Procedure Manual Ad Hoc Committee

37 B. Resolution #26-2021 – A Resolution Of The City Council Of The City Of Whittier, Alaska, Establishing The City Of Whittier's Calendar Year 2022 *City* Legislative Priorities

39 C. Resolution #27-2021 – A Resolution Of The City Council Of The City Of Whittier, Alaska, Establishing The City Of Whittier's Calendar Year 2022 *State* Legislative Priorities

41 D. Resolution #28-2021 – A Resolution Of The City Council Of The City Of Whittier, Alaska, Establishing The City Of Whittier's Calendar Year 2022 *Federal* Legislative Priorities

43 E. Resolution #29-2021 – A Resolution Of The City Council Of The City Of Whittier, Alaska, Accepting City Ownership Of The Former Whittier Tank Farm Property From The United States Army Corps Of Engineers Consisting Of Approximately 58 Acres For The Amount Of \$165,000, And Appropriating Funds

86 F. Resolution #30-2021 – A Resolution Of The City Council Of The City Of Whittier, Alaska, Appointing The City Election Officials For The October 5, 2021 Regular City Election.

87 G. Resolution #31-2021 – A Resolution Of The City Council Of The City Of Whittier, Alaska, Awarding A Contract To GMC Contracting, Inc. To Conduct Earthquake Repairs For An Amount Not To Exceed \$1,487,112.70, And Appropriating Funds

92 H. Resolution #32-2021 – A Resolution Of The City Council Of The City Of Whittier, Alaska, Authorizing The Approval Of The City Of Whittier Employee Policy And Procedures Manual

96 I. Resolution #33-2021 – A Resolution Of The City Of Whittier, Alaska Approving The Assignment Of The Lease Between The City Of Whittier And Young S. And Kyung Yoo Subject To And Conditional Upon Amendments To The Lease, Approving The Essential Terms Of The Assignment To And Amendment Of The Lease With Tatiitlek Sound Holdings LLC. And The Essential Terms Of The Amended And Restated Lease With Tatitlek Sound Holdings LLC., And Authorizing The City Manager To Enter Into Agreements With The Parties Incorporating The Essential Terms Approved In This Resolution

**13. UNFINISHED BUSINESS**

**14. NEW BUSINESS**

A. Schedule Special Meeting for 7:00 pm, October 12, 2021 to Certify the 2020 Regular Election

B. Office of the Clerk Project Introduction

169 C. 2022 Harbor Fee Recommendations

D. City Manager Contract Review

**15. COUNCIL DISCUSSION**

**16. CITIZEN'S DISCUSSION**

**17. COUNCIL AND ADMINISTRATION'S RESPONSE TO CITIZEN'S COMMENTS**

**18. ADJOURNMENT**



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**WHITTIER CITY COUNCIL  
REGULAR MEETING  
TUESDAY AUGUST 17, 2021  
7:00 PM  
COUNCIL CHAMBERS  
PUBLIC SAFETY BUILDING**

## **MINUTES**

### **1. CALL TO ORDER**

Mayor Dave Dickason called the meeting to order at 7:02 p.m.

### **2. OPENING CEREMONY**

Mayor Dave Dickason led the Pledge of Allegiance.

### **3. ROLL CALL**

#### **A. Council members present and establishing a quorum:**

Victor Shen, Monty Irvin, Tom Wagner, and Dave Dickason.

**MOTION:** Tom Wagner made a motion to excuse Peter Denmark, David Pinguoch, and Dan Blair from tonight's meeting

**SECOND:** Monty Irvin

**DISCUSSION:** None

**VOTE:** Motion passed unanimously

#### **B. Administration Present:**

Jim Hunt, City Manager

Naelene Matsumiya, City Clerk

Kris Erchinger, Finance Director

Scott Korbe, Public Works Director

Andre Achee, Police Chief

Dave Bord, Harbormaster

**Others Present:** Cathy McCord, Alexandra Matsumiya, Dave Goldstein, Hope Borg, Diane Hunt, Charlene Arneson, Anna Dickason, Mark Hager, Rose Medez, Kristin Carpenter, Katie Berry, Donna Logan, and Kelly Bender.

#### **4. APPROVAL OF MINUTES**

July 20, 2021, City Council Regular Meeting

**MOTION:** Tom Wagner made a motion to approve the July 20, 2021, City Council regular Meeting minutes as written

**SECOND:** Monty Irvin

**DISCUSSION:** None

**VOTE:** Motion passed unanimously

#### **5. APPROVAL OF THE REGULAR MEETING AGENDA**

**MOTION:** Victor Shen made a motion to approve the August 17, 2021, Regular Meeting Agenda with amendments to move the Presentation item to 5a.

**SECOND:** Tom Wagner

**DISCUSSION:** None

**VOTE:** Motion passed unanimously

#### **6. MAYOR'S REPORT**

##### **A. Mayor Report**

Dave Dickason reported that there is a lot of work ahead for the City Council and hoped that Special meetings can be held for Council members who have been busy with the summer season can catch up on. He mentioned his meeting with Sean Thorne and how Sean chose Whittier to launch his campaign for the Libertarian ticket for Alaska's representative for U.S. Senator. Dave directed some questions over to administrations regarding leases and the sign donated by Ted Spencer. He concluded with a fond farewell to George and Gerda Weamire, long-time residents of Whittier, and wished them well for their future.

##### **B. Vice Mayor Report**

Excused from tonight's meeting and unavailable to give a report.

#### **7. MANAGER'S REPORT**

##### **A. City Manager and Director Reports- Jim Hunt**

Jim reported on positive financial updates. He mentioned the letter that was included in the packet from Gov. Dunleavy that was sent to the Alaska Railroad regarding a lawsuit. Jim stated that there is a financial strategy planning for the Harbor Phase 3 rebuild. He reported on the Buckner Building Request for Qualifications and received interest back from Brownfield Program Services ad submissions from SLR Consulting and Cardno Inc. Jim stated that it's important for the City to move forward as it looks good to the Delegation. Jim reported on the event he attended to meet the Kingdom of the Netherlands Ambassador. He reported that he had been keeping the City's lobbyists updated on potential and future projects and the potential project the City may have with Cardno Inc. Jim spoke about the Tsunami advisory that residents in Alaska had received. Weekly testing of the siren is being done.

Kris Erchinger reported that the issue the City had with the Internal Revenue Services was resolved. She gave a brief history on the situation and the status of it when she started working for the City. She saw that it was affecting the City's ability of applying for grants so she worked very hard to get the City up to date and get the issue corrected. She reported that the City had applied for 2 grants and updated that the grant for the ambulance was successful. She said that the City had been rewarded a grant for \$958,385.00 from the State to recover from loss of Cruise Ship head-tax. She said as it is a state grant and not CVP monies, limitations are not the same but there are limitations. She gave an updated on the FLAP grant and that the City received the monies after

being officially notified for eligibility for \$2.5 million. She directed the Council to the packet and explained check marks on the budget policies dashboard. The Mayor thanked Kris for all her work. He asked about the restrictions for the state grant covering CPV funds. Kris explained that until she sees the actual grant agreement, the City won't know the restrictions.

Jim added that Whittier's census result for 2020 and that the population has gone from 220 to 272.

Andre Achee gave an update on the Hazmat Response exercise at the Head of the Bay with the 103<sup>rd</sup> Civil Support Team and the Whittier Public Safety Department. He gave the timeline for this training. He spoke about the tsunami warning siren/system/advisory and the monitoring of the information center with NOAA and the Tsunami Warning Center. He updated on the ambulance and said it is fully operational.

Dave Borg gave an update on the bathroom situation. He said that restrooms are working and are operational but the portable toilets are in town until the 15<sup>th</sup>. The Mayor gave suggestions for improvement.

## **8. COMMISSION/COMMITTEE REPORTS**

### **A. Planning Commission**

Nothing new to report

### **B. Port & Harbor Commission**

Nothing new to report

### **C. Parks & Recreation Committee**

Victor Shen reported on the recent ongoings, volunteer day, and service group. He said that up to 200-300ft. of trail was built in the connector trail and reported on the meeting that had just happened tonight and said new people had shown up to potentially help with social media and paperwork.

### **D. Whittier Community School**

Nothing new to report

### **E. Prince William Sound Aquaculture Corp.**

Nothing new to report

### **F. Regional Citizen's Advisory Council**

Nothing new to report

## **9. CITIZENS COMMENTS ON AGENDA ITEMS NOT SCHEDULED FOR PUBLIC HEARING**

None

## **10. APPROVAL OF THE CONSENT AGENDA**

None

## **11. PUBLIC HEARINGS (NON-ORDINANCE)**

None

## **12. PRESENTATIONS (Item moved to 5a)**

### **Prince William Sound Economic Development – Kristin Carpenter, Executive Director**

Kristin Carpenter gave a brief history about the Economic Development district and how they find funding through the Economic Development administration. She gave examples of how the agency finds projects to help those in the district with comprehensive goals and strategies. Katie Berry with the McKinley Research Group gave a PowerPoint presentation on what their goals and priorities are. Questions were asked by the Council and the group was able to provide answers.

## **13. RESOLUTIONS**

A. Resolution #24-2021 – A Resolution of the City Council of the City Of Whittier, Alaska, Accepting Funds from the American Rescue Plan Act of 2021 (ARPA) for Governmental Units Within Census Areas as Distributed Through the State of Alaska, and Appropriating Funds

Kris gave a description of the resolution is the accepting of federal funds distributions and said that the resolution is a second pot of money that is being distributed to cities in census areas. She said the funds require Council approval.

**MOTION:** Tom Wagner made a motion to adopt Resolution #24-2021

**SECOND:** Monty Irvin

**DISCUSSION:** None

**VOTE:** Motion passed unanimously

## **14. UNFINISHED BUSINESS**

A. Res. #12-2021, Regarding Ad Hoc Committee  
Item was not discussed.

B. Personnel Policy and Procedures  
Item was not discussed.

## **15. NEW BUSINESS**

A. Commission Appointments  
1. Port and Harbor Commission Seat C – Nick Olzenak

Nick Olzenak was appointed by the Mayor to the Port and Harbor Commission as he had changed his residency to Whittier.

## **16. COUNCIL DISCUSSION**

Victor Shen urged citizens to reach out to their doctors about the vaccine and to consider getting it.

Dave Dickason mentioned the mishap with the Tsunami Warning system. He apologized to the Community.

## **19. CITIZEN'S DISCUSSION**

Kelly Bender stated that discussion for the Fudge Shop is still on the table.

## **20. COUNCIL AND ADMINISTRATION'S RESPONSE TO CITIZEN'S COMMENTS**

Jim responded to Kelly and stated that it is still a topic of discussion with the attorney. He reminded Holly that it needs to be discussed.

## **21. ADJOURNMENT**

Council adjourned the meeting at 8:05pm

**ATTEST:**

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**Naelene Matsumiya**  
**City Clerk**

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**Dave Dickason**  
**Mayor**



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**WHITTIER CITY COUNCIL  
SPECIAL MEETING  
TUESDAY, SEPTEMBER 07, 2021  
6:00 PM  
COUNCIL CHAMBERS  
PUBLIC SAFETY BUILDING**

## **MINUTES**

### **1. CALL TO ORDER**

Mayor Dave Dickason called the meeting to order at 6:06 p.m.

### **2. OPENING CEREMONY**

Mayor Dave Dickason led the Pledge of Allegiance.

### **3. ROLL CALL**

**A. Council members present and establishing a quorum:** Peter Denmark, David Pinquoch, Tom Wagner, Victor Shen, Monty Irvin, and Dave Dickason

#### **B. Administration Present:**

Jim Hunt, City Manager

Naelene Matsumiya, City Clerk

Kris Erchinger, Finance Director

Scott Korbe, Public Works Director

Holly Wells, City Attorney

**Others present:** Kris Knauss, Mickey Richardsson, Tyler Hickman, Jason Davis, and Russell Dick.

### **4. APPROVAL OF THE SPECIAL MEETING AGENDA**

**MOTION:** Tom Wagner made a motion to approve the Special Meeting Agenda

**SECOND:** Victor Shen

**DISCUSSION:** Move Executive Session Item to 9a.

**VOTE:** Motion passed unanimously

### **5. ORDINANCES**

#### **Introduction**

A. Ordinance #03-2021 – An ordinance of the City Council of the City of Whittier, Alaska, Amending The Water and Wastewater Tariff And Providing for a 3.0% Increase to all rates and changes effective January 01, 2022 Plus a 5.0% Increase Effective October 01, 2022 and Providing for Automatic Annual Adjustments Effective with The First Billing Cycle Each Year Thereafter, By An Amount Equal to The Three Previous Full Year's Average Increase In The

CPI.

Scott Korbe explained that in 2006, water and sewer rates were set and in 2019, Water and Wastewater Department and the Finance Director brought forward a strategy to make up 27% deficit loss by inflation. He explained that in January 2020, Council authorized a CPI increase of 1.317% and another 5% increase in October. He stated that Council authorized CPI and rate increases for every other year. He said that the Department is hoping to create a financial base and to come up with steady increases to apply for grants that the City is monitoring. He reminded Council that the capital reserve that the City has for Water Wastewater is for improvement and replacement for end-of-life cycle. He stated that the end-of-life cycle is 50 years and the City is 15 years into the life cycle so funds have been reserved and this Ordinance will continue to assist in reserving funds.

**MOTION:** Victor Shen made a motion to schedule a Public Hearing at the next Regular Meeting on September 21, 2021

**SECOND:** Tom Wagner

**DISCUSSION:** None

**VOTE:** Motion passed 5-1

## 6. RESOLUTIONS

Resolution Res. #25-2021– A Resolution of the City Council of the City of Whittier, Alaska, Authorizing A Contact with Cardno to Provide Professional Consulting Services Related to Brownfield Services at the Bucker Building And Other Possible City Properties

Jim Hunt gave a brief description as to what to expect from the services from Cardno and Brownfield and gave examples of projects they've done in the past. He said it will be a good opportunity to get the ball rolling for the Buckner Building plans as it has been a priority for the City for a while and if successful, they can help with other properties within the City and City-owned properties. He answered questions from the Council.

**MOTION:** Tom Wagner made a motion to adopt Res. #25-2021

**SECOND:** Victor Shen

**DISCUSSION:** None

**VOTE:** Motion passed 5-1

## 7. EXECUTIVE SESSION (Item was moved to 9a during the meeting)

A. Economic Development Project- Matters that, if immediately disclosed, would tend to affect the finances of the City; WMC 2.08.040(I)

**MOTION:** Victor Shen made a motion to enter into Executive Session at 6:32 pm

**SECOND:** Tom Wagner

**DISCUSSION:** None

**VOTE:** Motion passed unanimously

Council entered into Executive Session at 6:32

**MOTION:** Tom Wagner made a motion to direct the City Manager to research development at the Head of the Bay in accordance with the comprehensive plan and legislative priorities and exit out of Executive Session at 8:15 pm and resume Special Meeting.

**SECOND:** Victor Shen

**DISCUSSION:** None

**VOTE:** Motion passed unanimously

Council exited Executive Session and resumed Special meeting at 8:15

(Clerk's note: Monty Irvin exited the meeting at 7:06 pm)

B. Personnel- Matters that would tend to injure the reputation of a person; provided, however, that the person may request a public discussion; WMC 2.08.040(2)

**MOTION:** Victor Shen made a motion to enter into Executive Session at 8:17 pm

**SECOND:** Tom Wagner

**DISCUSSION:** None

**VOTE:** Motion passed unanimously

Council entered into Executive Session at 8:17 pm

**MOTION:** Tom Wagner made a motion to exit out of Executive Session at 8:39 pm

**SECOND:** Victor Shen

**DISCUSSION:** None

**VOTE:** Motion passed unanimously

Council exited Executive Session and resumed Special Meeting at 8:39

**MOTION:** Tom Wagner made a motion to Express Council's Support for City Manager's authority to Enter into contract renewal and negotiations with Existing and proposed City directions.

**SECOND:** Victor Shen

**DISCUSSION:** None

**VOTE:** Motion passed 4-1

## **7. COUNCIL DISCUSSION**

Council discussed bringing forward City Manager contract at the next regular meeting in accordance to procedures.

## **8. CITIZEN'S DISCUSSION**

None

## **9. ADJOURNMENT**

All were in favor of adjourning the meeting at 8:44 p.m.

**ATTEST:**

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**Naelene Matsumiya**  
**City Clerk**

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**Dave Dickason**  
**Mayor**

Date: September 17<sup>th</sup>, 2021  
To: Whittier City Council and Administration  
From: Dave Dickason  
Subject: Mayor's Report – August/September

**Meetings Attended:**

- September 2<sup>nd</sup> 6:30 PM: EAC Meeting
- September 7<sup>th</sup> 6:00 PM: Special Council Meeting
- September 15<sup>th</sup> 12:30 PM: Chamber of Commerce Meeting

**Upcoming Schedule:**

- October 5<sup>th</sup>: Election Day
- October 6<sup>th</sup>: 6:00 PM: Planning and Zoning Mtg.
- October 7<sup>th</sup>: 6:00 PM: Port and Harbor Mtg.
- October 19<sup>th</sup> 7:00 PM: Regular Council Mtg.

**Follow-up:**

Kayak launch options  
RV Dump Station, Air Compressor  
Pedestrian Improvements around Whittier Seafood  
Communications  
Budget Review - Projections  
Public Safety: Improvement of Dispatch Services

**Open Goals:**

SHORT TERM

- ARRC Land Transfer presentation to Legislature
- Policies and Procedures / Code Update
- Lease Standardization & Enforcement

MID TERM

- DOD Tank-Farm Land Transfer of 58 Acres
- US Forest Service Transfer of unused Marston Property
- Community Park Construction Funding (PWSED helping to seek grant funding)
- Determine Funding for Final Harbor Construction Phase

LONG TERM

- Shotgun Cove Road Extension - FLAP Grant
- Head of Bay Development - Breakwater
- Buckner Building: Environmental Remediation.

To: Whittier City Council  
From: City Manager Jim Hunt  
Re: City Manager Report for September Council Meeting 2021

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## **Introduction**

The purpose of this report is to provide the Whittier City Council, and the public, a brief summary of the City of Whittier ("City") projects that the City Administration worked on and advanced during August and September 2021 and to provide City Council and the public a brief introduction to the projects the City anticipates tackling in October, 2021.

## **Summary of Projects**

The following is a summary of the projects to which I, and City Staff, dedicated significant portions of time this month:

We are awaiting scoring of both MARAD Grant Applications to replace the DeLong Dock and create uplands adjoining it.

We have been collaborating with Eastern Aleutians Tribes in an effort to find a provider for the clinic.

We are working with our engineering firm on Shovel Ready Projects for Infrastructure and other opportunities in the near future.

The Tank Farm Conveyance paperwork process is complete.

Note: The Clinic is currently closed. An effort is underway to provide it be open once a week.

## ***Council lobbying and legal reform Priorities***

I, along with the staff, worked diligently on several projects identified by City Council as priorities, including:

- Continue to work on preparation planning sessions and the for the next regular Legislative Session and working with the city attorney and our state lobbyist to develop an effective lobbying approach to promote the City's interests and its needs in negotiations and interactions that will be forthcoming
- Conferences and planning sessions with the City Attorney to draft and adopt laws recommended by individual Council members and to draft documents and strategies to develop concrete means to carry out Council directives;
- Attended zoom meetings regarding projects identified on the City's State priority list

- We have signed the contract for Brownfield Services. Grant efforts and meetings have begun. Our Federal lobbyists are up to speed.
- One of our Federal Lobbyist team visited Whittier in August and I met with him twice over two days.

### ***Additional Projects***

The following is a brief itemization of other projects completed this month:

1. Scott and I met with a company / investors, interested in possibly siting a new business in Whittier.
2. Met with a local business owners and managers
3. The two lease assignments should be about ready to be processed as of this reading.
4. We will have seven days a week EMS coverage through December 2021 and we are working for longer.
6. Completed the State's Congregate Housing Survey
9. Attended PWS Economic Development meeting
10. Interviews were performed for Assistant City Manager – Assistant City Manager hired
11. Attended Cooper Landing Emergency Services Awards Ceremony
12. Working with USFS on regarding conveyance of lands discussion near Portage Pass Trailhead
13. In discussions with Ted Spencer to hang a piece of Whittier, Alaska History in Chambers

### **Public Safety Report**

**May 2021**

<b>Call Types</b>	<b>Whittier</b>	<b>Girdwood</b>	<b>Other Total</b>
Traffic / DUI / Driving Violations	92	41	
Security Checks	18	15	
Suspicious Activity	5	5	
Property Crimes	5	4	
Assault / Disturbance	4	6	
Welfare Checks	2	13	
Other (includes wildlife issues)	5	11	
Fire / EMS	10	n/a	

<b>Total Calls:</b>	<b>141</b>	<b>95</b>	<b>236</b>
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## June 2021

<b>Call Types</b>	<b>Whittier</b>	<b>Girdwood</b>	<b>Other</b>	<b>Total</b>
Traffic / DUI / Driving Violations	154	37	1	
Security Checks	26	13		
Suspicious Activity	6	7		
Property Crimes	4	4		
Assault / Disturbance	2	11		
Welfare Checks	4	4		
Other (includes wildlife issues)	8	10		
Fire / EMS	7	n/a		
<b>Total Calls:</b>	<b>211</b>	<b>86</b>	<b>1</b>	<b>298</b>

## July 2021

<b>Call Types</b>	<b>Whittier</b>	<b>Girdwood</b>	<b>Other</b>	<b>Total</b>
Traffic / DUI / Driving Violations	169	44		
Security Checks	47	16		
Suspicious Activity	5	4		
Property Crimes	5	3		
Assault / Disturbance	8	6		
Welfare Checks	3	2		
Other (includes wildlife issues)	16	8		
Fire / EMS	12	n/a		

<b>Total Calls:</b>	<b>265</b>	<b>83</b>
	<b>Whittier</b>	<b>Girdwood</b>

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**Confluence Strategies**

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## **City of Whittier**

### **Special Session Report**

**2021 Alaska Legislative Session**

***32<sup>nd</sup> Legislature – 3<sup>rd</sup> Special Session***

*September 12, 2021*

## **Legislature**

***Majority press releases & announcements:***

## House Majority

### *Alaska House Hears Presentation On Complete Fiscal Plan, Providing For Growing Dividends And Essential Services*

The House Ways and Means Committee [held a hearing today](#) on legislation that would solve the state's structural budget deficit while also keeping the state on track to permanently provide healthy dividends to Alaskans.

The plan includes two bills sponsored by House Ways and Means, which in conjunction with [HB 189](#) and [HB 104](#) would balance the budget by Fiscal Year 2024.

[HB 3008](#) commits one-quarter of the yearly draw from the Permanent Fund to dividends with the remainder going to pay for troopers, teachers, transportation, and every other essential service the state provides. It would produce sustainable, predictable dividend amounts that start at \$1,248 in 2022 and grow from there. It would complement constitutional protections for the Permanent Fund and dividends.

[HB 3007](#) is aimed at preserving the overall current oil tax structure while making a modest change to the per barrel oil tax credit, generating modest amounts of additional revenue to balance the budget.

<https://akhouse.org/2021/09/09/alaska-house-hears-presentation-on-complete-fiscal-plan-providing-for-growing-dividends-and-essential-services/>

#### **Bills Introduced & In-Play during 3<sup>rd</sup> Special Session :**

#### **SENATE**

<i>Bill</i>	<i>Short Title</i>	<i>Prime Sponsor(s) Date</i>	<i>Status</i>
<a href="#">SB 53</a>	PERM FUND; ADVISORY VOTE	Rules request of GOV	02/24/2021
<a href="#">SB 67</a>	NURSE; LICENSURE; MULTISTATE COMP	RULES REQUEST OF GOV.	02/03/2021
<a href="#">SB3001</a>	APPROP: OPERATING; PF; ED	RULES request of GOV	08/23/2021
<a href="#">SB3002</a>	TAX: MOTOR FUEL, CORP. INCOME, O&G	SENATOR BEGICH	09/02/2021
<a href="#">SB3003</a>	PERMANENT FUND; SUSTAINABLE DIVIDEND; PCE	SENATOR BEGICH	09/01/2021
<a href="#">SB3004</a>	PERMANENT FUND DIVIDEND; 50/50 POMV SPLIT	SENATOR KIEHL	09/02/2021
<a href="#">SB3005</a>	INCOME TAX	SENATOR KIEHL	09/02/2021
<a href="#">SB3006</a>	HEALTH CARE REQS; COVID-19; TELEHEALTH	SENATE RULES BY GOV	09/02/2021

## **HOUSE**

<b>Bill</b>	<b>Short Title</b>	<b>Prime Sponsor(s)</b>
<a href="#"><u>HB 189</u></a>	EMPLOYMENT TAX FOR EDUCATION	HOUSE WAYS & MEANS
<a href="#"><u>HB3001</u></a>	APPROPRIATION LIMIT; GOV BUDGET	REPRESENTATIVE KAUFMAN
<a href="#"><u>HB3002</u></a>	PERMANENT FUND: INCOME	REPRESENTATIVE EASTMAN
<a href="#"><u>HB3003</u></a>	APPROP: OPERATING; PERM FUND; EDUCATION	RULES BY REQUEST OF THE GOV
<a href="#"><u>HB3004</u></a>	APPROP: REVERSE OPERATING APPROP. VETOES	HOUSE WAYS & MEANS
<a href="#"><u>HB3005</u></a>	OIL AND GAS PRODUCTION TAX	REPRESENTATIVE TARR
<a href="#"><u>HB3006</u></a>	STATE SALES AND USE TAX	REPRESENTATIVE TARR
<a href="#"><u>HB3007</u></a>	OIL & GAS PER BARREL TAX CREDIT	HOUSE WAYS & MEANS
<a href="#"><u>HB3008</u></a>	PERMANENT FUND DIVIDEND; 25/75 POMV SPLIT	HOUSE WAYS & MEANS

### **Hearing Schedule Next Week:**

(H)FINANCE

Sep 13 Monday 1:30 PM

+ [HB 189](#)

+

ADAMS 519

EMPLOYMENT TAX FOR EDUCATION

Bills Previously Heard/Scheduled

### **Hearing materials/ Documents of interest:**

#### **Presentation – Senate Finance – HB3003 Budget & PFD**

[090721 Permanent Fund What If Scenarios Presentation 9-7-21.pdf](#)

[090721 Permanent Fund Law Presentation 9-7-21.pdf](#)

[Copy of HB3003 Amendments 8.25.2021 Department Representatives.pdf](#)

[HB 3003 MultiYearAgencySummary UGF.pdf](#)

[HB 3003 MultiYearAgencySummary All Funds.pdf](#)

#### **APPROPRIATION LIMIT; GOV BUDGET – HB3001/HJR301**

[Leg Finance Appropriation Limits Presentation 9.8.21.pdf](#)

[HJR 301\\_HB 3001 Sponsor Statement.pdf](#)

[HB 3001 Sectional Analysis.pdf](#)

[HJR 301 Sectional Analysis.pdf](#)

[HJR 301\\_HB 3001 Presentation.pdf](#)

[HJR 301\\_HB 3001 Supporting Documents.pdf](#)

***TAX: MOTOR FUEL, CORP. INCOME, O&G – SB3002***

[SB 3002 Version A.PDF](#)

[SB 3002 Sponsor Statement.pdf](#)

[SB 3002 Sectional Analysis.pdf](#)

[Presentation DOR & DNR - Taxes Overview 09.09.2021.pdf](#)

[SB 3002 Letter of Support - PWSRCAC.pdf](#)

[SB 3002 Letter of Opposition - Usibelli Coal Mine, Inc..pdf](#)

***PERM FUND; ADVISORY VOTE – SB53***

[SB 53 01.1921 Permanent Fund; Income; Dividend TL - Senate.pdf](#)

[SB 53 SectionalVers I- 9-9-21\\_.pdf](#)

[SB 53 DOR Senate Finance 9.10.2021.pdf](#)

## Administration

### **Governor's Office:** **Governor's Press Releases ~**

#### ***Governor Dunleavy Prepares to Fight Biden Administration Over Resource Development Will seek an increase in Alaska Statehood Defense funds in FY22 budget***

**September 9, 2021 (Anchorage)** – At a press conference today, Alaska Governor Mike Dunleavy was joined by representatives from five of the state's leading resource development organizations to call out the Biden administration for its latest attempts to snuff out Alaska's natural resource based economy that will result in lost jobs, revenue and economic prosperity for all Alaskans. Earlier this week, the U.S. Bureau of Land Management announced it will "reevaluate" the approved plan of development for the National Petroleum Reserve-Alaska, an area specifically set aside by the U.S. Congress for oil and gas development. This means the proposed Willow Project, which could produce up to 100,000 barrels of oil per day, may be derailed. BLM's own webpage states NPR-A "is an important resource for meeting America's energy needs." Now the U.S. Environmental Protection Agency is announcing it will file legal proceedings to re-start the Clean Water Act 404c veto process for Bristol Bay. This could set a dangerous precedent by allowing a federal agency to preemptively veto any project or permit on state land.

Governor Dunleavy will request additional funding in his proposed FY 22 budget for the Alaska Statehood Defense legal fund to preserve our rights to Alaska's land and waters. The funds will be used to take the Biden administration to court to defend Alaska's rights and its ability to support itself with responsible and safe natural resource development.

Here are more examples of the Biden administration's actions against Alaska:

- Cancelled oil and gas exploration leases in ANWR
- Stopped all new oil and gas leases on federal public land
- Reversed lifting the Roadless Rule in the Tongass National Forest
- The radical 30X30 program that could lock up Alaska forever
- Changing the definition of Waters of the United States, to grab more land and water from Alaska
- Ignoring the U.S. Supreme Court's unanimous decision in the Sturgeon Case

<https://gov.alaska.gov/newsroom/2021/09/09/governor-dunleavy-prepares-to-fight-biden-administration-over-resource-development-will-seek-an-increase-in-alaska-statehood-defense-funds-in-fy22-budget/>

### ***Agencies Announcements~*** **Press Releases/Reports:**

#### ***Alaska's COVID response: Why we need legislative action***

By Adam Crum and Julie Anderson

On Sept. 2, Gov. Mike Dunleavy [expanded](#) his special session agenda to include two pieces of legislation that will strengthen the state's ongoing response to the recent COVID-19 surge.

The governor expanded his special session call to accelerate the response to the ongoing COVID-19 public health emergency that has fatigued and stressed Alaska's health care system. Since early 2020, the Alaska State Hospital and Nursing Home Association, or ASHNA, and the Alaska Department of Health and Social Services, or DHSS, have worked in partnership to enhance our health care network and to ensure that facilities, providers and professionals on the front lines have the resources they need to protect Alaskans during this

difficult time. As the delta variant emerged in Alaska, our partnership has grown stronger as we've worked to identify additional tools and resources the state, with legislative support, could quickly bring online. The legislation introduced last week reflects those conversations and the specific requests for help made by those partners.

<https://www.adn.com/opinions/2021/09/08/alaskas-covid-response-why-we-need-legislative-action/>

**September 2021**

### **The Rental Market in 2021**



*Despite the extraordinary circumstances, our annual survey found a relatively stable market.*

**Also inside:**

*How well states are recovering their lost jobs*

*New survey gauge pandemic's effects on households*

[September 2021 Trends](#)

## **Major News Articles / Political Items of Interest**

### Health

#### **Gov. Dunleavy: Health capacity is constrained, but emergency declarations should be few and far between**

There can be no doubt the “delta variant” is impacting the health care capacity in Alaska hospitals, said Gov. Mike Dunleavy on the Friday [Must Read Alaska Show](#). Dunleavy had just finished visiting an Anchorage hospital, where he spoke with health care professionals about the dual problem of not having enough beds and also hospital staff burnout.

<https://mustreadalaska.com/gov-dunleavy-health-capacity-is-constrained-but-emergency-declarations-should-be-few-and-far-between/>

#### **Rep. Kevin McCabe: Disaster declarations — the cure that's worse than the ailment**

After celebrating fleecing Alaskans of their Permanent Fund dividends *yet again*, the House Democrat Coalition and its allies began the drumbeat designed to pivot away from the damage they just inflicted upon Alaskans.

Now, the only thing that matters to them is the number of COVID-19 cases. House leadership wants Alaskans forcibly masked, they want vaccinations, they want decreased capacities, and they want you to shutter your business and stay home.

<https://mustreadalaska.com/rep-kevin-mccabe-disaster-declarations-the-cure-thats-worse-than-the-ailment/>

### **Alaska's COVID-19 hospitalizations top 200 as health care facilities brace for the worst**

More than 200 people are now hospitalized with COVID-19 in Alaska, setting yet another record as health care leaders sound dire warnings and say the state's hospitals are treading water.

<https://www.adn.com/alaska-news/2021/09/09/covid-19-hospitalizations-in-alaska-rise-above-200-as-health-care-facilities-brace-for-the-worst/>

### **Vaccine mandate debate roils Alaska**

Debate over COVID-19 vaccine mandates accelerated in the state Friday, with Gov. Mike Dunleavy calling the Biden administration's decision to require vaccines for millions of workers "unamerican" and Alaska state senators finding themselves deeply divided over the issue.

<https://www.juneauempire.com/news/vaccine-mandate-debate-roils-alaska/>

## Business/Economy

### **Alaska governor wants to push back against recent federal resource development decisions**

Gov. Mike Dunleavy held a press conference on Thursday, saying his administration is preparing to push back harder against recent federal decisions impacting resource development in Alaska. The governor wants the Alaska Legislature to appropriate more money during its next regular session in January for the [Statehood Defense Initiative](#). That initiative is set to receive \$4 million over the current fiscal year to defend Alaska resource projects in court.

<https://www.alaskasnewsresource.com/2021/09/09/live-alaska-governor-speaks-epa-decision-that-could-halt-pebble-mine/>

## State Budget

### **Alaska Housing Finance Corporation to accept more rent relief applications**

Renters seeking financial assistance due to the COVID-19 pandemic can apply for support beginning Sept. 13 up to Oct. 1.

### **Alaska Legislature lacks agreement on new PFD formula as end of special session approaches**

The Alaska Legislature's special session is scheduled to end Tuesday, and legislative leaders believe they will pass a telehealth bill and legislation setting the 2021 Permanent Fund dividend before the session expires.

The state House approved a \$1,100 dividend earlier this month, but that amount could change in the Senate.

<https://www.adn.com/politics/alaska-legislature/2021/09/08/alaska-legislature-lacks-agreement-on-new-pfd-formula-as-end-of-special-session-approaches/>

## Politics/Policy Calls

### **Alaska is set to reap an infrastructure windfall. Let's not waste it.**

When Julius Caesar — the original czar — took over Gaul, he and other emperors put in place, over the course of decades, straight roads and ports in order to help facilitate trade between the city of Rome and the greater Roman Empire, and indeed around the empire. This undoubtedly helped the empire and the city of Rome itself to become the economic juggernaut of its day.

<https://www.adn.com/opinions/2021/09/04/alaska-is-set-to-reap-an-infrastructure-windfall-lets-not-waste-it/>

### **Banned from Alaska Airlines, state Sen. Lora Reinbold asks to be excused from votes at Capitol**

Eagle River Republican Sen. Lora Reinbold has asked to be excused from legislative business in the state Capitol, telling fellow lawmakers that her ban from Alaska Airlines makes it impossible to fly into Juneau.

<https://www.adn.com/politics/alaska-legislature/2021/09/09/banned-from-alaska-airlines-state-sen-lora-reinbold-says-she-cant-work-at-capitol/>

### **A brighter future for Alaska: Why I'm running for governor**

*By Les Gara*

I want a brighter future, not a state people have been leaving for a record four years in a row. We can do better than the loss of thousands of good-paying jobs, closed small businesses and less opportunity to succeed. I'm running for governor because we deserve an Alaska we can believe in again.

<https://www.adn.com/opinions/2021/09/09/a-brighter-future-for-alaska-why-im-running-for-governor/>

### **A constitutional convention is a terrible idea for Alaska**

Just when you start to think the Alaska Legislature could not possibly screw up this state any further, its shenanigans and back-biting inaction spawn a very, very bad idea among outliers in what passes for a political class in the Frozen North.

<https://www.adn.com/opinions/2021/09/10/a-constitutional-convention-is-a-terrible-idea-for-alaska/>

### **Supporters of a big PFD are starting to back a constitutional convention. Alaska's conservatives and libertarians see an opportunity**

In five hours of public testimony late last month, a line of Alaskans criticized members of the Alaska Legislature for failing to come up with a reliable formula for Alaska's annual Permanent Fund dividend. Legislators have heard similar testimony since 2017, but this year's comments brought a new wrinkle: A growing number of Alaskans, dissatisfied with a lack of change, are calling for a constitutional convention to address the issue.

<https://www.adn.com/politics/2021/09/05/supporters-of-a-big-pfd-are-starting-to-back-a-constitutional-convention-alaskas-conservatives-and-libertarians-see-an-opportunity/>

### **Redistricting board draws 2 proposals for Alaska's new legislative boundaries**

Alaska's five-person redistricting board approved two first-draft maps Thursday, adopting them by unanimous vote and closing the first step of Alaska's once-a-decade redistricting process. By Nov. 10, the board must approve a final draft that will set the borders of Alaska's state House and Senate seats.

<https://www.adn.com/politics/2021/09/09/redistricting-board-draws-two-proposals-for-alaskas-new-legislative-boundaries/>

## **HARBORMASTER REPORT**

### **Admin**

USCG approved the claim submitted for the amount of \$1970.50 for the response to remove the vehicle driven down the launch ramp in October 2020

Report on City Dock (attached) recommend cease Travel Lift operations until which time we can provide proper infrastructure

Met with USCG Sector Anchorage Command Center personnel to discuss Whittier capabilities and limitations. Also discussed Tsunami preparations and response capabilities

Havn Fun II has finally been removed from the uplands

Arctic Moon and Marlee have been transferred to responsible party and will be removed from the harbor uplands 9/17  
Fee proposal for 2022 (attached)

### **Operations**

Public Works completed oil change and preventative maintenance on Emergency Generator

Public Works assisted with removing hydro rams from City Dock crane. Rams to repair shop, ETR unknown

Water leaks on G/W floats addressed

Crew repaired bull rail on A float

Crew repaired west end pile guide on passenger dock

Boardwalk overhead lighting, W float flood lights and launch ramp lighting repaired. Several boardwalk lights still out due to bad ballast, ETR TBD

Pedestal lighting are being repaired, photocells and corrosion is being addressed on affected peds

Crew responded to hydraulic fluid spill at the launch ramp. Did a fantastic job at containing and cleaning the 6-10 gallon release. Ramp was closed for approximately 30 minutes

Preparing for winter

Public Works and Harbormaster are working on an affordable solution to address the Smitty's cove launch ramp.



# THE CITY OF WHITTIER

*Gateway to Western Prince William Sound*

P.O. Box 608 • Whittier, Alaska 99693 • (907) 472-2327 • Fax (907) 472-2404

**PORT & HARBOR COMMISSION  
REGULAR MEETING  
THURSDAY, SEPTEMBER 02, 2021  
COUNCIL CHAMBERS  
PUBLIC SAFETY BUILDING  
6:00 p.m.**

**MINUTES**

**1. CALL TO ORDER**

City Clerk, Naelene Matsumiya, called the meeting to order at 6:01 pm

**2. OPENING CEREMONY PLEDGE OF ALLEGIANCE**

Naelene Matsumiya

**3. ROLL CALL**

Steven Bender, Mark Mitchell, Dave Goldstein, Brad VonWichman, Arnie Arneson  
Cathy McCord (Joined at 6:28 pm)

**ADMINISTRATION PRESENT**

Jim Hunt, City Manager  
Dave Borg, Harbormaster  
Naelene Matsumiya, City Clerk  
Amy Pantaleon, Office Assistant  
Rose Medez, Harbor Finance

**PUBLIC PRESENT**

**4. APPROVAL OF REGULAR MEETING AGENDA**

**MOTION:** Dave Goldstein made a motion to approve the September 02, 2021, Regular Meeting with the amendment to remove the Swear In Ceremony for Nick Olzenak and a typo on the agenda.

**SECOND:** Arnie Arneson

**DISCUSSION:** None

**VOTE:** Motion passed unanimously

## **5. APPROVAL OF MINUTES**

**MOTION:** Mark Mitchell made a motion to approve the August 05, 2021, Regular Meeting Minutes as is.

**SECOND:** Arnie Arneson

**DISCUSSION:** None

**VOTE:** Motion passed unanimously

## **6. HARBORMASTER AND CHAIRPERSON REPORT**

Dave Borg reported theft in The Harbor investigation on process.

Hydraulic spill crew of Harbor responded.

Harbor Finance filed with the Coastguard regarding the car that drove off the launch ramp.

Water leaks on G and W floats.

Dave Goldstein inquired about camera updates and recommended that the Harbor contact the Anton Anderson Memorial Tunnel as he claims they have extra cameras and maybe they can be donated to the Harbor. The Commission discussed cameras in the harbor for some time with the Harbormaster and the City Manager. Different avenues for security were discussed. After discussion on security, the City Manager and Harbormaster explained liabilities for the City if put in this position and the Commission agreed that boat owners should hold responsibility for loss property and should invest in cameras for their boats. Dave Borg did mention a camera for the harbor that would exhibit weather in Whittier for those planning to get out on the water. Dave Goldstein also asked about the launch ramp repair at Smitty's Cove. Dave Borg responded that he met with Scott Korbe about the construction on the ramp and it is estimated that concrete will cost around \$3,000- \$4,000 for repair.

Steven Bender had nothing new to report.

## **7. UNFINISHED BUSINESS**

### **A. Delong Dock**

Dave Borg reported that the grant was still pending.

### **B. Harbor Phase 3**

Nothing new to report

### **C. Infrastructure Issues**

Nothing new to report

### **D. Smitty's Cove Launch Ramp**

Item mentioned in Harbormaster report.

### **E. Floating Breakwater Moorage**

Dave Borg reported that the item is a priority.

### **F. Boat Yard Usage**

Dave Borg stated that there is no plan as of right now. Future expenses to be discussed as well as expenses for laborers.

## **9. NEW BUSINESS**

### **A. Fee Schedule Review**

Dave Borg reported that the Council is requesting to approve the Harbor fee schedule for 2022. He stated that he and his staff have been working had to come forward with the recommendations for the Commission and items on the fee schedule that he is proposing to

change. Items were sent out in a memo. He stated that the report for the City Dock was reviewed and based on the information, the lift should be limited to 20,00 pounds. He recommended that \$25,000-\$35,000 repair to the travel lift to lift boats that don't exceed 20,00 pounds, doesn't look like good money spent. He recommended that there be a 5% increase from the \$67.13 (currently) to \$70.49. He said that the increase will also apply to the MRF (Repair fund). He explained that he did a 4-year average and if the 5% increase works out, the harbor will have roughly \$28,000 will be in its harbor fund annually. He stated that he hopes to be reasonable. He moved on to Monthly Transient and his recommendation to the Council to lower by 30%. He shared the numbers from 2020 and 2021. He said in 2021, the harbor made more money despite the lowering of costs. He explained that in 2020, the harbor made \$110,491 (228 boats, 5,061 linear ft of dock sold in monthly transient) and in 2021, \$114,249 (222 boats, 7,467 linear ft. of dock in monthly transient) was generated. He estimated that in 2021, the harbor was able to sell 2,400 more linear ft. than last year. He mentioned other rates and compared them to winter/summer rates.

Dave Borg mentioned change in winter transient dates, but no change in fee but the qualifications that justify. He mentioned no change in launch ramp fee but change in how the rates will apply. He mentioned Dry Storage, no changes to fee, but change in dates (spring date flexible depending on snow removal) and conditions that may apply i.e. boats to be stored on trailers and not stands/blocks. He recommended to remove Boat Maintenance as the City does not have permits to operate a boat yard but is looking to change location as the area it is in now can be used for parking in the future. He stated that there is a problem with oil in the harbor as people are finding ways to avoid paying the fee. He recommended that the fee be struck so as that oil can be safely removed from the harbor. He explained that some are creating a hazard by disposing oil incorrectly and that the city must pay to clean up. He mentioned parking and no change to the daily rate, but annual rate needs to be addressed with City Council.

Dave Goldstein agreed that the \$250 per vehicle is a good deal and did some estimations on businesses and annual fees. He said some charter businesses have passes for customers by way of placards and reiterated his agreement to the fee.

Mark Mitchell stated his support on the parking fee. He suggested all moorage rates should go up 5% across the board and explained his reasons.

Brad VonWichman agreed as well as Arnie Arneson. There were no objections to the 5% increase in moorage rates suggestion. Arnie added that if rates were going to be raised, it's a good idea to do it uniformly.

Commission discussed lighting in the harbor with Dave Borg.

Dave Borg stated that the fee proposal will go as it stands and to propose the discontinue the Travel Lift operations and not fund the money to make the repairs. He asked for input regarding this. Commission had nothing to add.

He went through his suggestions from the Commission: 5% increase across the board to all moorages. He asked if the 5% should increase from the old rate or the rate as it stands. Commission responded with the rate as it is now. He asked for conflicts. Commission had no input and supported these increases.

Dave Borg asked the Commission about the parking fee and stated that another resolution will be brought to Council as there needs to be clarification for businesses operating in the harbor. He stated that current unwritten practice is business owners can purchase one parking pass for \$250.00 and receive two more passes for free. He went on to say that there has also been a

practice of a business blocking off up to ten spaces for \$750.00 a year. He mentioned that after searching, these practices and fees are not addressed in our code, the harbor handbook, or leases and stated that further clarification concerning this practice is required from the Council prior to 2022. Commission recommended to do away with the practice of “buy 1, get 2 free” and any special parking arrangements not codified.

Dave Goldstein asked about fines and if those fines are included in the discussion for rate change. Dave Borg responded that those rates are set in the City’s Code.

**10. MISCELLANEOUS BUSINESS**

Dave Borg gave an update on the Arctic Moon and The Marley and said someone has been working on them and hopes to get them on the water in a couple of days and tow them out of Whittier. Said the individual is saving the City in disposal fees.

**11. COMMISSION DISCUSSION**

None

**12. CITIZENS DISCUSSION**

None

**13. ADJOURNMENT:**

Meeting was adjourned at 6:55 pm.

**ATTEST:**

\_\_\_\_\_  
Naelene Matsumiya  
City Clerk

\_\_\_\_\_  
Steven Bender  
Commission Chairperson

**CITY OF WHITTIER, ALASKA  
ORDINANCE # 03-2021**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITTIER, ALASKA, AMENDING THE WATER AND WASTEWATER TARIFF AND PROVIDING FOR A 3.0% INCREASE TO ALL RATES AND CHARGES EFFECTIVE JANUARY 1, 2022 PLUS A 5.0% INCREASE EFFECTIVE OCTOBER 1, 2022, AND PROVIDING FOR AUTOMATIC ANNUAL ADJUSTMENTS EFFECTIVE WITH THE FIRST BILLING CYCLE EACH YEAR THEREAFTER, BY AN AMOUNT EQUAL TO THE THREE PREVIOUS FULL YEARS' AVERAGE INCREASE IN THE CPI**

**WHEREAS**, the City of Whittier is responsible to operate and maintain safe, reliable and adequate water and sewer infrastructure and services to serve the needs of residents, businesses and visitors to the community of Whittier and;

**WHEREAS**, the City accepts state and federal capital grant funding for water and sewer system improvements and in order to qualify for low-interest loans and bond financing for capital infrastructure, must be able to demonstrate the adequacy of utility rates and the financial capacity to repay debt; and

**WHEREAS**, the City seeks adequate fee-based rates sufficient to cover current operating costs, maintenance, repairs, depreciation, debt service and replacement of existing systems, plus capital expansion as required by WMC 13.04.150 and 13.12.170; and

**WHEREAS**, the City did not increase water or sewer rates between 2006 and 2018 and during that period, the consumer price index increased by 27.6%, resulting in a loss of purchasing power necessary to maintain and replace existing utility infrastructure and equipment, and keep up with increased cost of operations; and

**WHEREAS**, the City increased water and sewer rates by 1.317% on January 1, 2020, by 5.0% on October 1, 2020 and by 1.64% on January 1, 2021; and

**WHEREAS**, the City of Whittier's enterprise funds should operate similar to business entities by setting rates sufficient to cover the full cost of operations and maintenance, overhead, infrastructure replacement and system expansion; and

**WHEREAS**, the administration recommends incremental rate increases in order to avoid "rate shock" to customers and ensure the sufficiency of funding necessary to operate and maintain utility equipment and infrastructure; and

**WHEREAS**, the City must be financially prepared to address utility infrastructure priorities in the near future, including construction of two new water wells to provide the City with a consistent and safe water supply utilizing existing emergency generation equipment, plus the ability to house future chlorination infrastructure, and bonding costs for this project will be approximately \$102,000 per year for a period of 20 years; and

**WHEREAS**, the proposed rate increase for all water and sewer rates is established at 3.0% beginning January 1, 2022 plus an additional 5.0% increase effective October 1, 2022, and thereafter, all water and sewer rates are increased effective the first billing cycle of each year, by an amount equal to the three previous full years' average increase in the Anchorage consumer price index for all urban consumers (for example, January 1, 2023 rates will increase based on the three-year average CPI for 2019, 2020 and 2021).

**NOW, THEREFORE, THE WHITTIER CITY COUNCIL ORDAINS:** the following rate schedule shall apply to all water and sewer services within the City of Whittier and shall be reviewed as required by 13.04.150 and 13.12.170.

**Section 1.**      **Classification** This is a non-code ordinance.

**Section 2.**      **Effective Date** The water and sewer rates set out in this ordinance become effective with the first billing cycle of January 2022 and the billing cycle in October 2022, with subsequent rate increases being effective the first billing cycle of January each year thereafter.

**Section 3.**      **Automatic Rate Adjustments** Beginning January 1, 2023 and each January 1 thereafter, all Water and Sewer Rates are to be adjusted annually beginning the first billing of each calendar year to reflect an average of the three previous published years' annual increases in the Consumer Price Index, All Items, 1982-84=100 for all Urban Consumers, Anchorage, Alaska Area ("CPI") as published by the United States Department of Labor, Bureau of Labor Statistics. (For example, 2023 rates will reflect an increase based on the average CPI for 2019, 2020 and 2021).

## **WATER RATE SCHEDULE RECURRING SERVICE CHARGES**

The rates and charges shown on Schedules A through C are the monthly service charges for water service only. Assessments, contributions in aid of construction or charges for specific services beyond the scope of normal water services (e.g., special construction of a long service line; repair of damage which was the responsibility of the customer) are in addition to the monthly service charges.

### **SCHEDULE A - Unmetered Residential Accounts**

This schedule applies to unmetered residential accounts including single-family, duplex, triplex and multiple-family buildings with a service connection no larger than 1". The monthly service charges the Utility bills each account are comprised of a Usage Charge for each dwelling unit and a Customer Charge.

	<u>1/1/2021</u>	<u>1/1/2022</u>	<u>10/1/2022</u>
<b>Monthly Service Charges:</b>			
<b>Usage Charge (per dwelling unit)</b>	\$51.00	\$52.53	\$55.16
<b>Customer Charge (per account)</b>	\$17.46	\$17.99	\$18.89

### **SCHEDULE B - Metered Commercial and Multiple-Dwelling-Unit Residential Accounts**

This schedule applies to metered commercial and residential accounts including duplex and triplex, mobile home parks, and multiple-family buildings. The monthly service charges the Utility bills each account are comprised of a Volume Rate for each 1 gallon of water consumed and a Customer Charge and a Meter Charge for each meter used which varies according to the size of the meter(s) used.

Metering requirements are contained in chapter A of the **Customer Rights and Responsibilities** section. (see **Rules and Regulations of the Whittier Water & Wastewater Department**)

	<u>1/1/2021</u>	<u>1/1/2022</u>	<u>10/1/2022</u>
<b>Volume Rate per 1 Gallon</b>	\$0.007720	\$0.007952	\$0.008350
<b>Water Metered Cubic Ft. Usage</b>	\$0.057756	\$0.059488	\$0.062463

**Customer Charge (per account, per month)****Service Size**

Less than 1"	<del>\$15.05</del>	\$15.50	\$16.28
1"	<del>\$17.26</del>	\$17.77	\$18.66
1 ½"	<del>\$26.47</del>	\$27.26	\$28.63
2"	<del>\$36.46</del>	\$37.55	\$39.43
3"	<del>\$59.82</del>	\$61.61	\$64.69
4"	<del>\$93.23</del>	\$96.02	\$100.83
6"	<del>\$275.40</del>	\$283.66	\$297.85

**SCHEDULE C Special Customers**

(1) Temporary construction service to a parcel using the service line that will serve the building under construction. Customers in need of water service under this schedule must obtain a permit. The monthly service charges shall be those specified in Schedules A or B above.

(2) Temporary off-site construction or other use requiring a connection to a fire hydrant. Customers in need of water service under this schedule must obtain a permit. The monthly service charges are specified below.

**Water Meter Charge**

A monthly water meter charge shall be collected from users for water meters owned by the utility.

**Meter/Service Size****Monthly Charge**

	<b><u>1/1/2021</u></b>	<b><u>1/1/2022</u></b>	<b><u>10/1/2022</u></b>
Less than 1"	<del>\$6.14</del>	\$6.33	\$6.64
1"	<del>\$15.35</del>	\$15.81	\$16.61
1 ½"	<del>\$23.03</del>	\$23.72	\$24.91
2"	<del>\$30.71</del>	\$31.63	\$33.21
3"	<del>\$46.06</del>	\$47.44	\$49.82
4"	<del>\$61.42</del>	\$63.26	\$66.42
6"	<del>\$92.12</del>	\$94.89	\$99.63

## SEWER RATE SCHEDULE RECURRING SERVICE CHARGES

### Commercial Wastewater Service Adjustment

Monthly billings may be adjusted for a commercial service that consumes water that is not returned to the municipal wastewater system. In order to qualify for an adjustment, the customer must petition the City either separately meter the water that is not returned to the wastewater system, and demonstrate that the separately metered water will not enter the wastewater system or separately meter the water that is returned to the wastewater system. Upon review and approval, the City will deduct the volume of separately metered water that is not returned to the wastewater system from the total metered use prior to calculation of the volume charge each month.

### RESIDENTIAL DOMESTIC AND COMMERCIAL SERVICE

	<u><del>1/1/2021</del></u>	<u>1/1/2022</u>	<u>10/1/2022</u>
<b><u>SCHEDULE A - Unmetered Accounts</u></b>			
Usage Charge (monthly, per dwelling unit)	<del>\$51.00</del>	\$52.53	\$55.16
Customer Charge (monthly, per account)	<del>\$124.28</del>	\$128.01	\$134.41

### **SCHEDULE B - Metered Commercial and Multiple-Dwelling-Unit Residential Accounts**

Volume Rate per 1 Gallon of water usage	<del>\$0.007720</del>	\$0.007952	\$0.008350
Metered Cubic Ft. Usage (=Gallon Rate x 7.481)	<del>\$0.057756</del>	\$0.059489	\$0.062466
Customer Charge (monthly, per account)	<del>\$12.91</del>	\$13.30	\$13.96

### NONRECURRING SERVICE CHARGES AND FEES

#### **Water turn-on/turn-off (per visit)**

During business hours	<del>\$71.90</del>	\$74.06	\$77.77
During non-business hours	<del>\$201.66</del>	\$207.71	\$218.09

#### **Fees for water service connections.**

##### **This charge includes permit and inspection fees.**

1"	<del>\$735.27</del>	\$757.33	\$795.19
1 1/2"	<del>\$892.05</del>	\$918.81	\$964.75
2"	<del>\$1059.65</del>	\$1091.44	\$1146.01
3"	<del>\$1254.28</del>	\$1291.91	\$1356.50
4"	<del>\$1497.57</del>	\$1542.49	\$1619.62
5"	<del>\$1767.89</del>	\$1820.92	\$1911.97
6"	<del>\$2113.89</del>	\$2177.31	\$2286.18
8"	<del>\$2497.75</del>	\$2572.60	\$2701.31

#### **Temporary off-site construction service annual permit**

Per vehicle	<del>\$48.87</del>	\$50.34	\$52.86
Per site for non-vehicle projects	<del>\$48.87</del>	\$50.34	\$52.86
Permit administration fee	<del>\$48.87</del>	\$50.34	\$52.86

#### **Other fees and charges**

Reconnection or restore charge	<del>\$162.19</del>	\$167.06	\$175.41
Unauthorized turn-on/turn-off	<del>\$162.19</del>	\$167.06	\$175.41
Dishonored checks	<del>\$35.00</del>	\$36.05	\$37.85

<b><u>Remote meter charge</u></b>	<del>\$159.65</del>	\$164.44	\$172.66
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**ENACTED BY THE CITY COUNCIL OF THE CITY OF WHITTIER, this 21st  
day of September, 2021.**

**Introduced By: Dave Dickason  
Introduction Date: 7 September 2021  
Public Hearing: 21 September 2021**

**ATTEST:**

\_\_\_\_\_  
Naelene Matsumiya  
City Clerk

\_\_\_\_\_  
Dave Dickason  
Mayor

Ayes:  
Nays:  
Abstain:  
Absent:

## **ACTION MEMORANDUM REGARDING RESOLUTION 12-2021**

To: Whittier City Council

From: City Manager Hunt

Re: Resolution No. 12-2021

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### **INTRODUCTION AND BACKGROUND**

Resolution 12-2021 entitled “A Resolution of the City of Whittier, Alaska Creating the Whittier City Council Policy and Procedure Manual Ad Hoc Committee” creates a committee comprised of the Mayor, a City Council member, the City Manager or his designee, the City Attorney, and the City Clerk and tasks the Committee with creating and presenting a policy and procedure manual to Council for approval. In approximately 2018, City Council member Peter Denmark encouraged Council to adopt uniform procedures and Council expressed interest in the creation of a policy and procedural manual but other City priorities resulted in Council’s postponement of the project.

In light of City Council’s expressed objectives, the Resolution creates a Committee so that any final product governing Council policies and procedures benefits from varying perspectives and the institutional and legal knowledge held by longstanding Council members, City employees, and legal counsel.

### **RECOMMENDED ACTION**

The City Administration recommends Council adopt Resolution No. 12-2021.

### **STAFF REVIEW**

This Ordinance has been reviewed by the City Attorney, the Finance Director, the Assistant City Manager, and the City Manager. The City Attorney and Assistant City Manager will be available at the April regular meeting to address any questions Council may have regarding the Resolution.

Sponsor(s): City Manager  
Introduction Date: May 18, 2021  
Adoption Date: \_\_\_\_\_

**CITY OF WHITTIER, ALASKA  
RESOLUTION #12-2021**

**A RESOLUTION OF THE CITY OF WHITTIER, ALASKA CREATING THE  
WHITTIER CITY COUNCIL POLICY AND PROCEDURE MANUAL *AD HOC*  
COMMITTEE**

**WHEREAS**, Whittier City Council has expressed a desire to adopt formal uniform Council policies and procedures created with public participation, collaboration between the City Administration and Council, and careful review of current best practices for the efficient and transparent conduct of municipal business; and

**WHEREAS**, Council's objectives are best served by the creation of an *Ad Hoc* committee consisting of members from City Administration and City Council tasked with creating a draft City Council Policy and Procedure Manual for Council's review, consideration, and final adoption via resolution,

**NOW, THEREFORE, the Whittier City Council resolves;**

Section 1. The "Whittier City Council Policy and Procedure Manual *Ad Hoc* Committee" is hereby created and directed to present to City Council draft City Council policies and procedures in the form of a City Council Policies and Procedures Manual.

Section 2. The members of this Committee shall include Mayor Dave Dickason, City Council member Peter Denmark, City Manager Jim Hunt or Assistant City Manager Annie Reeves, City Attorney Holly Wells, and City Clerk Naelene Matsumiya.

Section 3. The Committee shall remain in effect until the draft Manual has been presented and acted upon by Council unless Council disbands the Committee before that time.

Section 4. This resolution shall be effective immediately upon adoption.

**PASSED AND APPROVED** by a duly constituted quorum of the Whittier City Council on this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Dave Dickason  
MAYOR

ATTEST:

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Naelene Matsumiya  
CITY CLERK

Ayes:

Nays:

Absent:

Abstain:

**CITY OF WHITTIER, ALASKA  
RESOLUTION #26-2021**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, ALASKA,  
ESTABLISHING THE CITY OF WHITTIER'S CALENDAR YEAR 2022 CITY  
LEGISLATIVE PRIORITIES**

**WHEREAS**, the City annually meets to discuss and prioritize the City's top capital needs, projects and important issues and the resulting list represents the City's most important local legislative priorities; and

**WHEREAS**, this resolution validates the City's capital projects and prioritizes the needs of the City, focusing the efforts of the City administration and the City Council in their lobbying efforts; and

**WHEREAS**, the passage of this resolution occurs through a public process which provides an opportunity for the community members and the City Council to identify and prioritize local capital needs and priority issues; and

**WHEREAS**, all projects on this list are consistent with the City of Whittier's Comprehensive Plan and Strategic Plan.

**NOW, THEREFORE BE IT RESOLVED**, by the City Council of Whittier, Alaska that the following Capital Budget priorities are identified as the City of Whittier's local priorities for Calendar Year 2022:

1. Transfer of Non-Operational ARRC Lands to the City of Whittier; Master Lease and Legislature Presentation
2. Economic Development Opportunities
3. Whittier Harbor Improvements

**BE IT FURTHER RESOLVED** that the City Manager is hereby instructed to advise the City's state and federal delegations, including the Governor and the President, as appropriate, of the City's legislative priorities, and to take all appropriate steps to provide background information and testimony in representing the City's best interests.

**PASSED AND APPROVED** by a duly constituted quorum of the Whittier City Council on this 21st day of September, 2021.

**Introduced by: Jim Hunt**

**Introduction date: September 21**

\_\_\_\_\_  
**Dave Dickason**  
**Mayor**

**ATTEST:**

\_\_\_\_\_  
**Naelene Matsumiya**  
**City Clerk**

Ayes:  
Nays:  
Absent:  
Abstain:

**CITY OF WHITTIER, ALASKA  
RESOLUTION #27-2021**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, ALASKA,  
ESTABLISHING THE CITY OF WHITTIER'S CALENDAR YEAR 2022 STATE  
LEGISLATIVE PRIORITIES**

**WHEREAS**, the City annually meets to discuss and prioritize the City's top capital needs, projects and the resulting list represents the City's most important State legislative priorities; and

**WHEREAS**, the compiled list of projects and priorities is distributed to members of the Alaska State Legislature, the Governor's Office and the City's state lobbying firm, with the intent of presenting the desires of the City with respect to State legislative funding requests; and

**WHEREAS**, this resolution serves to identify and validate the City Council's prioritized list of community projects and capital needs, and focuses the efforts of the City Council and administration in their lobbying efforts; and

**WHEREAS**, passage of this priority list results from a public process which encourages input from members of the community and the City's elected council members; and

**WHEREAS**, the projects on this list are consistent with the City's Comprehensive and Strategic Plans; and

**WHEREAS**, it is the intent of the City Council to provide the City's lobbying firm, members of the Alaska State Legislature, and the Governor, as well as the President, Alaska Congressional Delegation, and appropriate federal officials, adequate information to represent the desires of the City concerning legislative requests including necessary funding requirements.

**NOW, THEREFORE BE IT RESOLVED**, by the City Council of Whittier, Alaska that the following Capital Budget priorities are identified as the City of Whittier State Legislative Priorities for Calendar Year 2022:

1. Transfer of ARRC Non-Operational Lands to the City of Whittier; master lease and legislative presentation
2. Transfer of Head of Bay Lands to the City of Whittier
2. Shotgun Cove Road
3. Head of Passage Canal Project
4. Whittier Harbor Improvements and continued support for the State of Alaska Department of Transportation and Public Facilities Municipal Harbor Grant Program

**BE IT FURTHER RESOLVED** that the City Manager is hereby instructed to advise the City's lobbying firm, members of the Alaska State Legislature, and the Governor, of the City's legislative priorities and take all appropriate steps to provide background information and testimony in representing the City's best interests.

**PASSED AND APPROVED** by a duly constituted quorum of the Whittier City Council on this 21<sup>st</sup> day of September, 2021

**Introduced by: Jim Hunt**

**Introduction date: September 21, 2021**

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**Dave Dickason**  
**Mayor**

**ATTEST:**

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**Naelene Matsumiya**  
**City Clerk**

Ayes:  
Nays:  
Absent:  
Abstain:

**CITY OF WHITTIER, ALASKA  
RESOLUTION #28-2021**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, ALASKA,  
ESTABLISHING THE CITY OF WHITTIER'S CALENDAR YEAR 2022 FEDERAL  
LEGISLATIVE PRIORITIES**

**WHEREAS**, the City annually meets to discuss and prioritize the City's top capital needs and projects and the resulting list represents the City's most important Federal legislative priorities; and

**WHEREAS**, the compiled list is distributed to the City's congressional delegation and the City of Whittier's federal lobbying firm, with the intent of presenting the desires of the City with respect to Congressional funding requests; and

**WHEREAS**, this resolution identifies top projects, prioritizes community needs, and focuses the administration and Council's efforts in lobbying on behalf of the community; and

**WHEREAS**, passage of this priority list results from a public process which encourages input from members of the community and the City's elected council members; and

**WHEREAS**, the projects on this list are consist with the City's Comprehensive and Strategic Plans.

**NOW, THEREFORE BE IT RESOLVED**, by the City Council of Whittier, Alaska that the following Capital Budget priorities are identified as the City of Whittier's federal legislative priorities for Calendar Year 2022:

1. Shotgun Cove Road
2. MARAD DeLong Dock Replacement Project
3. Department of Defense Land Transfer
4. Head of Passage Canal Project
5. Buckner Building Environmental Remediation

**BE IT FURTHER RESOLVED** that the City Manager is hereby instructed to advise the President, members of Alaska's Congressional Delegation, the City's federal lobbying firm and other appropriate federal officials of the City's legislative priorities and to take all appropriate steps to provide background information and testimony in representing the City's best interests.

**PASSED AND APPROVED** by a duly constituted quorum of the Whittier City Council on this 21<sup>st</sup> day of September, 2021

**Introduced by: Jim Hunt**

**Introduction date: September 21, 2021**

---

**Dave Dickason**  
**Mayor**

**ATTEST:**

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**Naelene Matsumiya**  
**City Clerk**

Ayes:  
Nays:  
Absent:  
Abstain:

**CITY OF WHITTIER, ALASKA  
RESOLUTION #29-2021**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER,  
ALASKA, ACCEPTING CITY OWNERSHIP OF THE FORMER  
WHITTIER TANK FARM PROPERTY FROM THE UNITED STATES  
ARMY CORPS OF ENGINEERS CONSISTING OF APPROXIMATELY 58  
ACRES FOR THE AMOUNT OF \$165,000, AND APPROPRIATING  
FUNDS**

**WHEREAS**, Section 2841 of the National Defense Authorization Act for Fiscal Year 2011 authorized the Secretary of the Army to convey, with consideration, to the City of Whittier, all right, title, and interest of the United States to the approximately 58 acre parcel then known as the Whittier Tank Farm; and

**WHEREAS**, the property is located within Township 8 North, Range 5 East, Seward Meridian, and is identified as Lots 1 and 2, United States Survey 8726, dated 1 October 1986, and filed with the Anchorage Recorders Office on 11 October 1986; and

**WHEREAS**, the City and the US Army Corps of Engineers (Grantor) have completed the transfer documentation which necessitates approval by the City Manager of the Quitclaim Deed, and which is further subject to an Environmental Covenant approved the Alaska Department of Environmental Conservation; and

**WHEREAS**, the Grantor reserves a perpetual right and easement for construction, operation, maintenance and removal of a biovent equipment compound, biovent wells, sub-surface injection piping and remedial/monitoring equipment in order to mitigate any remaining biohazards on the property, as described in the Quitclaim Deed as attached hereto; and

**WHEREAS**, the Grantor hereby covenants, per Section 1(c) of the Quitclaim Deed, that “all remedial action necessary to protect human health and the environment with respect to any hazardous substance identified pursuant to section 120(h)(3)(A)(i)(I) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 remaining on the property has been taken before the date of this deed” and, per Section 1(d), that “any additional remedial action found to be necessary after the date of this deed shall be conducted by the United States.”; and

**WHEREAS**, the City agrees that if an actual or threatened release of a hazardous substance is discovered on the property after the date of conveyance, the City shall be responsible for such release or newly discovered substance unless City can demonstrate that the release or newly discovered substance was due to the Grantor’s activities, use or ownership of the property; and

**WHEREAS**, the City is aware that the subsurface soil and groundwater have been determined to have been affected by petroleum spills for the past use of the property as a fuel storage facility, and that there are limitations on the City’ use of the property as further described in section 5 of the Quitclaim Deed; and

**WHEREAS**, the City is aware that the property is subject to an Environmental Covenant approved

by the Alaska Department of Environmental Conservation, as attached to this Resolution, which subjects the property to certain activity and use limitations as set forth in the Environmental Covenant including remedies included, but not limited to the following: bioventing on the ARRC property; long-term monitoring on both the Tank Farm and ARRC property to measure changes in contaminant concentrations in groundwater; periodic reviews once every five years; assessment of the risks associated with vapor intrusion into any future buildings to be constructed on the ARRC property; institutional controls to protect human health, safety and welfare until cleanup levels are reached.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of Whittier, Alaska that:

**Section 1.** The City hereby accepts the transfer of ownership of the Whittier Tank Farm property from the United States Army Corps of Engineers.

**Section 2.** The City Manager is hereby authorized to sign the Quitclaim Deed and any Environmental Covenant if necessary, and all documents necessary to facilitate transfer of ownership of the land to the City; and

**Section 3.** The City hereby agrees to the recitals contained in the Quitclaim Deed and the Environmental Covenant.

**Section 4.** Funding in the amount of \$165,000 is hereby appropriated from CPV reserves to the project expense account for land purchase, account no. 23-990-9200.

**PASSED AND APPROVED** by a duly constituted quorum of the Whittier City Council this 21<sup>st</sup> day of September, 2021.

**ATTEST:**

\_\_\_\_\_  
Naelene Matsumiya  
City Clerk

\_\_\_\_\_  
Dave Dickason  
Mayor

Ayes:  
Nays:  
Absent:  
Abstain:

## **CITY OF WHITTIER, ALASKA 2021 BUDGET POLICIES – EXHIBIT “A”**

### **1. General Fund – Fund Balance Policy**

The City should maintain a level of unassigned fund balance equal to at least 9-12 months' of expenditures and transfers-out<sup>1</sup>. A sufficient level of reserves is considered that which is able to cover unanticipated revenue shortfalls, unforeseen needs and emergencies, contribute to replacing existing infrastructure, and cover the potential shortfall of all other City funds.

- A. When the level of Unassigned Fund Balance is not within the desired range, a plan should be developed to bring fund balance to within the desired range within three years.
- B. When the level of Unassigned Fund Balance is below the desired range, withdrawals from Unassigned Fund Balance should be limited to emergency purposes.

*Fund Balance Considerations: The predictability of revenues (i.e. sales tax, PTBT, property tax); Vulnerability to single-source economic drivers (tourism, seafood industry); Volatility of expenditures; Exposure to one-time outlays (natural disasters, immediate capital outlays, state budget cuts); Drain on General Fund reserves from shortfalls in other Funds; Availability of resources in other Funds*

### **2. One-Time Revenue Policy**

One-time revenues (such as grant administration fees, sales of fixed assets, legal settlements, etc.) should *not* be utilized to fund ongoing expenditures but should be used to fund capital repairs and replacement. The use of one-time revenues to fund annual budgets promotes structural budget deficits in future years. To the extent that the General Fund Unassigned Fund Balance has reached 9 months of expenditures and transfers-out, *one-time revenues* will be allocated annually to a Capital Replacement Fund.

### **3. Revenue Stabilization Account Policy**

The City may create a revenue stabilization account to maintain financial resources to protect against the need to reduce service levels or raise taxes or fees due to temporary revenue shortfalls or unpredicted one-time expenditures. The balance in this account could, for example, be equal to ten percent of the General Fund's annual revenues<sup>2</sup>. This level of reserve is based on the City's increasing dependence on the visitor and seafood industries for the generation of sales tax, PTBT, fish taxes, CPV funds, camping fees, etc.

### **4. Accrued Annual Leave Funding Policy**

The City should consider establishing an internal service fund for the purpose of accumulating cash to pay for accrued but unused portion of annual leave for General Fund employees. This account would be designated solely for the payment of accumulated leave.

### **5. Capital Replacement Fund Policy**

The City should consider designating 50% of the prior year's annual surplus<sup>3</sup> into a Capital Replacement Fund for the purpose of financing major capital maintenance and repairs (defined as items in excess of \$20,000) in any year where the General Fund Unassigned Fund Balance is within the band of established policy levels<sup>4</sup>. Expenditures from this Fund require specific

<sup>1</sup> In 2020 the Policy requires Unassigned Fund Balance equal to between \$1,498,973 and \$2,248,460

<sup>2</sup> Currently \$270K. The City will develop a plan aimed at reaching this goal by 2023.

<sup>3</sup> Defined as the difference between revenues plus transfers-in versus expenditures plus transfers-out.

<sup>4</sup> Limit on Allocation of Surplus: The allocation of surplus funds from the General Fund to the Capital Replacement

appropriation from the City Council before being spent.

**6. Sales of General Fixed Assets**

Revenue from the sales of general fixed assets should be added to the Capital Replacement Fund.

**7. Recurring Fund Source for Capital**

The City should seek recurring funding sources to fund capital needs so that capital spending is not given last priority in competing for limited financial resources.<sup>5</sup>

**8. Motor Pool Appropriation Control**

Motor Pool reserves should be preserved for the sole intended purpose of replacing City heavy equipment and vehicles, based on the established goals of minimizing fluctuations to annual operating budgets and exercising fiscal prudence in saving for replacement of the City's fleet.

A. Loans issued from the Motor Pool to the other City Funds (if any) will be repaid with interest to the Motor Pool in order to safeguard the viability of the long-range vehicle and heavy equipment replacement plan.

B. The City will establish a Fleet Replacement Plan to be approved by the City Council. The Plan will allow for the routine and timely replacement of City vehicles and equipment at certain mileage or hour intervals per unit type, with the primary goals of maximizing safety, minimizing repair costs and achieving reasonable trade-in value.

**9. Enterprise Fund Rate Reviews**

Utility and Harbor rates should be reviewed annually to determine if they are adequate to cover annual operating and capital costs, plus the annual cost of depreciation. Tariffs should be adjusted to rise based on CPI annually, to reduce rate shock. Recommendations for annual rate adjustments beyond CPI should be made annually to the City Council.

**10. Enterprise Fund Depreciation (MRRF) Funds**

The City should establish a major repair and replacement fund (MRRF) for each of its major enterprise funds (Boat Harbor, Water and Wastewater, Delong Dock).

**11. Depreciation Funding Policy**

The policy of the City shall be to work toward funding a minimum of 100% of the annual rate of depreciation, recognizing that failure to establish adequate reserves for the replacement of plant and equipment shifts the financial burden of such major repairs and replacement, to future generations, creating an imbalance of inter-generational equity.

“Funding depreciation” is defined as either placing equivalent cash into the MRRF Fund, or spending on capital repairs valued greater than \$20,000 such that the total amount invested in major maintenance and repair is at least 100% of the annual depreciation. Investments in new infrastructure are not considered investments in capital for the purposes of depreciation funding, since they do not replace existing infrastructure.

*Exception:* Where Council determines that a specific enterprise fund asset will not be replaced at ratepayer or taxpayer cost, but will only be replaced through grants, or not be replaced at all, it may be prudent not to fund depreciation on that item.

**12. Tax Cap Policy**

Periodically review the City's tax cap on sales of items in excess of the cap to ensure that the

Fund should occur only when the General Fund Unassigned Fund Balance exceeds 6 months' reserves and should not draw the unassigned fund balance below 6 months' reserves.

<sup>5</sup> The City has not yet identified a source of funds to fund capital needs. The City could, for example, decide to allocate future State Revenue Sharing for capital purposes in the future.

cap does not erode the City's funding availability over time.

This deed was reviewed by  
Amanda Kranz,  
Attorney  
U.S. Army Corps of Engineers, Alaska District  
P.O. Box 6898  
JBER, AK 99806-0898

**QUITCLAIM DEED  
ANCHORAGE-WHITTIER POL PIPELINE  
(AKA: DEFENSE FUEL SUPPORT POINT-WHITTIER or WHITTIER TANK FARM)  
WHITTIER, ALASKA  
TRACT NO. F**

THIS QUITCLAIM DEED, made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the UNITED STATES OF AMERICA (hereinafter referred to as the “Grantor”), acting by and through the Director of Real Estate, pursuant to delegations of authority from the Secretary of the Army, pursuant to powers and authorities contained in the National Defense Authorization Act for fiscal year 2011, Public Law 111-138, whose mailing address is C/O Commander and District Engineer, United States Army Corps of Engineers, Alaska District, ATTN: CEPOA-PM-RE, P.O. Box 6898, Joint Base Elmendorf-Richardson, Alaska 99506-8698 and City of Whittier (hereinafter referred to as the “Grantee”), a city entity, whose mailing address is ATTN: Mayor Office, P.O. Box 636, Whittier, Alaska 99693.

WITNESSETH THAT:

WHEREAS, Section 2841 of the National Defense Authorization Act for Fiscal Year 2011 authorized the Secretary of the Army to convey, with consideration, to the City of Whittier all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, located in Whittier, Alaska, and consisting of approximately 58 acres and the appurtenant facilities stated in Exhibit C, known as the Whittier Tank Farm, for the purpose of permitting the recipient to use the parcel for economic development; and

WHEREAS, an active railway spur owned by the Alaska Rail Road Corporation crosses parcels 3 and 8 of Public Land Order 587 along the eastern side of the property shown on Exhibit B. The ownership of the lands below the crossing on these parcels did not transfer to the Alaska Railroad under Section 604(b)(1)(c) of the Alaska Railroad Transfer Act of 1982 (referred to as “ARTA”). The Exclusive License issued on 5 January 1985, recorded in the Anchorage Recording District, Book 1212, pages 297-352 which became Patent 50-2006-0045 in 2005 explicitly identifies these areas as exempt from transfer. A formal easement was never granted by the United States following the granting of the patent. It will be the responsibility of the City

of Whittier and Alaska Rail Road Corporation to negotiate an agreeable right of way which will ensure the Government access via the roadway onto the property; and

NOW THEREFORE, the GRANTOR, for and in consideration of ONE HUNDRED, SIXTY FIVE THOUSAND DOLLARS AND 00/100 (\$165,000.00), cash in hand paid, and other good and valuable consideration, the receipt of all of which is hereby acknowledged, does hereby REMISE, RELEASE, AND FOREVER QUITCLAIM unto the GRANTEE, its successors and assigns, all its right, title, and interest in the property situated, lying and being in the County of Valdez-Cordova census area, in the State of Alaska, containing approximately 58 acres as shown on Exhibit A, attached hereto and made a part hereof (hereinafter referred to as the "Property") being described as follows:

The Property is located within Township 8 North, Range 5 East, Seward Meridian, and identified as Lots 1 and 2, United States Survey 8726, dated 1 October 1986, and filed with the Anchorage Recorders Office on 11 October 1986.

SUBJECT TO all valid and existing restrictions, reservations, covenants, conditions, and easements, including but not limited to rights-of-way for railroads, highways, pipelines, and public utilities, if any, whether of public record or not.

TO HAVE AND TO HOLD the property granted herein to the GRANTEE and its successors and assigns, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, or claim whatsoever of the GRANTOR, either in law or in equity and subject to the terms, reservations, restrictions, covenants, and conditions set forth in this Deed.

RESERVING UNTO the GRANTOR a perpetual and assignable right and easement for the construction, operation, maintenance and removal of a Biovent Equipment Compound, biovent wells, sub-surface injection piping and remedial/monitoring equipment as identified in the Remedial Implementation Work Plan, DFSP Whittier-Whittier, Alaska, ADEC Contaminated Sites Database Hazard ID 1314; Contract #SP0600-15-D-5504 dated 15 August 2016. The Biovent Equipment Compound consists of a 8 feet Wide x 20 feet Long x 10 feet Tall building and surrounded by a 28 feet Long x 16 feet Wide x 6 feet Tall fence as identified in Exhibit D.

RESERVING UNTO the GRANTOR a perpetual and assignable right and easement for the construction, reconstruction, protection, maintenance, and operation of a multi-product pipeline system, as indicated on DOWL Survey; Project 1127.63xxx.01, Parcel No. E-1 and Parcel No. E-2, dated 12 August 2020 (Exhibit E).

The easement area will extend twenty-five (25) feet on either side of the center line of the existing pipeline, and the GRANTEE will not build any road or structure on the Easement Area unless at least four (4) feet of top cover is placed on the pipeline. For all other portions of the Easement Area, the GRANTEE will maintain three (3) feet of top cover at all times.

GRANTOR shall retain the right of entry onto the Property to make repairs, perform maintenance, undertake measures necessary to protect the pipeline, and to install new or replace existing piping in the Easement Area. The use of the Easement Area includes the ability of the GRANTOR to employ any machinery or service equipment necessary for repairs, maintenance, protection, or replacement of the pipeline, and any new installations. Any roads, structures, or improvement build by the GRANTEE will be done so at its own risk. If a road, structure, or improvement covers any portion of the Easement Area and the removal of that road, structure, or improvement covers any portion of the Easement Area and the removal of that road, structure, or improvement is necessary to gain access to the

pipeline and any new installations, the GRANTOR reserves the right and ability to remove any road, structure, or improvement after first providing GRANTEE reasonable notice of the intended undertaking. Should the GRANTEE elect to do so, GRANTEE will be provided a reasonable amount of time to remove any improvements that obstructs GRANTOR'S access to piping within the Easement Area. In exercising this right to remove obstacles impeding access to piping within the Easement Area, GRANTOR will take all reasonable measures to minimize any damage to the GRANTEE'S improvements within the Easement Area. The GRANTOR will not be liable for any damages to, or destruction of, any roads, structures, or improvements resulting from its use and exercise of the rights contained in this reservation.

AND IT IS FURTHER AGREED AND UNDERSTOOD by and between the parties hereto that the GRANTEE, by its acceptance of this Deed, agrees that, as part of the consideration for this Deed, the GRANTEE covenants and agrees for itself, its successors and assigns, forever, that this Deed is made and accepted upon each of the following covenants, which covenants shall be binding upon and enforceable against the GRANTEE, its successors and assigns, in perpetuity by the United States and other interested parties as allowed by federal, state or local law; that the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS set forth here are a binding servitude on the Property herein conveyed and shall be deemed to run with the land in perpetuity; and that the failure to include the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in subsequent conveyances does not abrogate the status of these restrictions as binding upon the parties, their successors and assigns:

**1. PROPERTY COVERED BY NOTICE, DESCRIPTION, ACCESS RIGHTS AND COVENANT MADE PURSUANT TO SECTION 120(h)(3)(A) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION, AND LIABILITY ACT OF 1980 (42 U.S.C. §9620(h)(3)(A)):**

For the Property, the Grantor provides the following notice, description, and covenant and retains the following access rights:

**a. NOTICE PURSUANT TO SECTION 120(h)(3)(A)(i)(I) AND (II) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION, AND LIABILITY ACT OF 1980 (42 U.S.C. §9620(h)(3)(A)(i)(I) AND (II)):**

Pursuant to section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability-Act of 1980 (42 U.S.C. §9620(h)(3)(A)(i)(I) and (II)), available information regarding the type, quantity, and location of hazardous substances and the time at which such substances were stored, released, or disposed of, as defined in section 120(h), is provided in Exhibit F, attached hereto and make a part hereof.

**b. DESCRIPTION OF REMEDIAL ACTION TAKEN, IF ANY, PURSUANT TO SECTION 120(h)(3)(A)(i)(III) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION, AND LIABILITY ACT OF 1980 (42 U.S.C. §9620(h)(3)(A)(i)(III)):**

Pursuant to section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(i)(III)), a description of the remedial action taken, if any, on the Property is provided in Exhibit F, attached hereto and made a part hereof.

**c. COVENANT PURSUANT TO SECTION 120(h)(3)(A)(ii) AND (B) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION, AND LIABILITY ACT OF 1980 (42 U.S.C. §9620(h)(3)(A)(ii) AND (B)):**

Pursuant to section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(ii) and (B)), the United States warrants that –

(a) All remedial action necessary to protect human health and the environment with respect to any hazardous substance identified pursuant to section 120(h)(3)(A)(i)(I) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 remaining on the Property has been taken before the date of this deed, and

(b) Any additional remedial action found to be necessary after the date of this deed shall be conducted by the United States.

**d. RIGHT OF ACCESS PURSUANT TO SECTION 120(h)(3)(A)(iii) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (42 U.S.C. §9620(h)(3)(A)(iii)):**

The United States retains and reserves a perpetual easement and right of access on, over, and through the Property, to enter upon the Property in any case which a remedial action or corrective action is found to be necessary on the part of the United States, without regard to whether such remedial action or corrective action is on the property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, test-pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this instrument. Such easement and right of access shall be binding on the Grantee, its successors and assigns, and shall run with the land.

In exercising such easement and right of access, the United States shall provide the Grantee or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Property and exercise its rights under this clause, which notice may be severely curtailed or even eliminated in emergency situations. The United States shall use reasonable means to avoid and to minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the Property. At the completion of work, the work site shall be reasonably restored. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Grantee, nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the United States.

In exercising such easement and right of access, neither the Grantee nor its successors and assigns, as the case may be, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this clause; provided, however, that nothing in this paragraph shall be considered as a waiver by the Grantee and its successors and assigns of any remedy available to them under the Federal Tort Claims Act.

## **2. "AS IS" CONDITION OF PROPERTY**

The Grantee acknowledges that it has inspected, or has had the opportunity to inspect, the property and accepts the Property in its present condition and state of repair. Except as provided in this Deed, the Grantee understands and agrees that the Property is conveyed "AS IS" without any representation, warranty, or guaranty by the Grantor as to quantity, quality, title, character, condition, size, or kind, or that the same is in a suitable condition or fit to be used for the purposes intended by the Grantee, and no claim for allowance or deduction upon such grounds will be considered.

No warranties, either express or implied, are given with regard to the condition of the Property including, without limitation, whether the Property does or does not contain asbestos, lead-based paint, or pesticides. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of the Property including, without limitation, any asbestos, lead-based paint, pesticides, or other conditions on the Property. The failure of the Grantee to inspect or to exercise due diligence to be fully informed as to the condition of the Property will not constitute grounds for any claim or demand against the Grantor.

Nothing in this "As Is" provision shall be construed to modify or negate the Grantor's obligation under the "Covenant Pursuant to Sections 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(ii) and (B))" or any other statutory obligations.

## **3. HOLD HARMLESS**

To the extent authorized by law, the GRANTEE, on behalf of itself, its successors, and assigns, covenants and agrees to indemnify and agrees to hold harmless the GRANTOR, its officers, agents, and employees from any and all claims, damages, judgements, loss and costs, including fines and penalties, arising out of the violations and the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in this Deed; and the GRANTOR shall not be responsible for any costs associated with activity under a conditional exception, amendment, or as exception to the Grant or change in activity or use, including, without limitation, costs associated with any additional investigation or remediation.

## **4. POST-TRANSFER DISCOVERY OF CONTAMINATION**

If an actual or threatened release of a hazardous substance is discovered on the Property after the date of conveyance, the Grantee, its successors or assigns, shall be responsible for such release or newly discovered substance unless Grantee is able to demonstrate that such release or such newly discovered substance was due to Grantor's activities, use, or ownership of the Property. If the Grantee, its successors or assigns believe the discovered hazardous substance is attributable to the Grantor's activities, use or ownership of the Property, the Grantee will immediately secure the site and notify the Grantor of the existence of the hazardous substances, and the Grantee will not further disturb such hazardous substances without the written permission of the Grantor.

The Grantee, for itself, its successors and assigns, as consideration for the conveyance of the Property, agree to release the Grantor from any liability or responsibility for any claims arising solely out of the release of any hazardous substance on the Property occurring after the date of the delivery and acceptance of this Deed, where such substance or product was placed on the Property by the Grantee, or its successors, assigns, employees, invitees, agents or contractors, after the conveyance. This paragraph shall not affect the Grantor's responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations, or the covenants contained herein.

## **5. ENVIRONMENTAL PROTECTION PROVISIONS.**

The subsurface soil and groundwater have been determined to be affected by petroleum spills from the past use of the Property as a fuel storage facility. The Property is identified in as Alaska Department of Environmental Conservation (ADEC) File No. 2114.38.01; the ADEC Contaminated Sites Program database Hazard ID 1314. The DLA continues remedial activities on the Property as identified in the DFSP-W Decision Document dated November 2015. Therefore, GRANTEE and its successors and assigns are prohibited from undertaking or allowing any activity on or use of the Property that violates the following land use restrictions contained herein below:

a. The City of Whittier, its successors and assigns, shall not remove, or disturb, or cause, or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, vestiges, remains of objects of antiquity, military character, or unknown origin. In the event such objects are discovered on the Property, the City of Whittier shall immediately notify the District Engineer, Alaska District, and the site and material shall be protected by the City of Whittier from further disturbance until a professional examination of them can be made or until such time as the District Engineer issues a notice to proceed.

b. The City of Whittier, its successors and assigns, shall be responsible (under the National Historic Preservation Act) for consulting with the State Historic Preservation Officer, as well as local Native American entities, if any buried archaeological remains are inadvertently discovered of the Property during construction on, or administration of the Property.

c. A deed notice will be filed with the state recorder's office documenting the extent additional contamination is discovered, other than as provided in Exhibit E, in order to inform future land owners of the history of the site and the possible presence of contamination. Any future deed notice will contain contact information for DLA and ADEC, in the event that additional information is required.

d. No intrusive actions may take place in the source area (which constitutes the entire Property) without prior written notification to ADEC.

e. No excavations may take place without prior briefing to site workers regarding potential concerns in the source area, and if contaminated soils are encountered, ADEC shall be notified following the same notification procedures outlined in 18 AAC 75.300. Contaminated soils requiring removal shall be segregated and stored so as to prevent the spread of contamination. Analytical samples in the excavated soils shall be collected and compared to the cleanup levels established in 18 AAC 75.341 Tables B1 and B2. If contaminant concentrations exceed these values, impacted soils shall be stored and disposed of in accordance with 18 AAC 75.370. ADEC may require additional excavation and soil treatment or disposal as necessary to protect human health.

f. The City of Whittier, its successors and assigns, shall grant the Department of the Army, ADEC, DLA, and their designated representatives the right to enter the Property at reasonable times to evaluate compliance with the institutional controls, conduct additional remediation, or perform monitoring. Additionally, the City of Whittier, its successors and assigns, shall prohibit activities on the site that might interfere with the site cleanup, operation and maintenance, monitoring, or other response actions. Additionally, the City of Whittier shall provide the Department of the Army and DLA with access to any final reports on environmental monitoring and/or remediation.

g. No potable water wells may be installed in contaminated areas. If the site is to be redeveloped, potable water must be supplied in accordance with 18 AAC 80.005-18 AAC 80.055. Alternately, potable water services will be provided by the City of Whittier as part of the public water supply and will be operated in accordance with 18 AAC 80.005-18 AAC 80.055.

h. Where soil or groundwater contamination remains above cleanup levels that allow for unlimited use and unrestricted exposure, a five year review will be conducted by DLA to ensure that the remedy continues to provide adequate protection of human health and the environment. The five year review will also assess institutional control (IC) compliance reporting and assess the appropriateness and applicability of ICs. The review will be provided to ADEC for review and comment. The first review will be completed in April 2021.

i. Bioventing off of the DFSP – W (on Alaska Railroad Property) will focus treatment on those portions of the smear zone that contain GROs at concentrations above the 18 AAC 75 maximum allowable concentrations.

j. Monitored natural attenuation parameters will be used to measure the rate of contaminant biodegradation and long term monitoring will be used to measure changes to contaminant concentrations in groundwater over time.

k. Tank pads and liners remain in place and do not fall under the responsibility of the DLA as they were installed by the Department of the Army during construction. The City of Whittier, its successors and assigns, would be responsible for the removal of the pads and liners and to receive approval from ADEC prior to removal.

l. Prior to constructing any new facilities on the Property, the GRANTEE, its successors and assigns, will provide ADEC with design drawings. ADEC may require vapor intrusion mitigation measures for enclosed structures. Typical vapor intrusion measures include use of an impermeable liner under the building foundation, inclusion of an impermeable layer beneath the building, and use of a vapor venting system to extract vapors as they accumulate. Alternately, construction with an air gap between the bottom floor and the ground surface can be used to mitigate vapor intrusion risk.

m. The GRANTEE, its successors and assigns, shall prohibit activities on the Property that might interfere with the Property cleanup, operation and maintenance, monitoring, and other environmental response actions.

n. The GRANTEE, its successors and assigns, shall grant the DLA, Department of Army, ADEC, and their designated representatives the right to enter the Property at reasonable times, and ensure entrance is free from any barriers, to evaluate environmental compliance with the institutional controls, install and maintain groundwater monitoring wells or perform monitoring. Department of the Army and DLA will notify, in advance, the GRANTEE of any new groundwater monitoring well installations or of any significant work.

o. Land Use Controls will be required on any future lease or memorandum of agreement for any organization, tenant, or activity at the site.

p. Annual notification of tenants about internal controls and annual groundwater monitoring is required (report due by April each year).

## **6. PROXIMITY OF AIRPORT**

The Whittier Airport is in close proximity to the subject Property. Accordingly, in coordination with the Federal Aviation Administration, the GRANTEE covenants and agrees, on behalf of itself, its successors and assigns and every successor in interest to the Property herein described, or any part thereof, that there will be no construction or alteration unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, Part 77, entitled, "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.

## **7. ANTI-DEFICIENCY ACT**

The GRANTOR's obligation to pay or reimburse any money under this Deed is subject to the availability of funds appropriated for this purpose to the Department of the Army, and nothing in this Deed shall be interpreted to require obligations or payments by the GRANTOR in violation of the Anti-Deficiency Act, 31 U.S.C. §1341.

## **8. NO WAIVER**

The failure of the Government to insist in any one or more instances upon complete performance of any of the said notices, covenants, conditions, restrictions, or reservations shall not be construed as a waiver or a relinquishment of the future performance of any such covenants, conditions, restrictions, or reservations; but the obligations of the GRANTEE, its successors and assigns, with respect to such future performance shall continue in full force and effect.

**\*\*\*\*\*SIGNATURE PAGE FOLLOWS\*\*\*\*\***

**IN WITNESS WHEREOF**, the GRANTOR has caused this Quitclaim Deed to be executed in its name by the Director of Real Estate, this the \_\_\_\_\_ day of \_\_\_\_\_ 2021.

UNITED STATES OF AMERICA

By: \_\_\_\_\_  
MARCIA A. DEVILLE  
Real Estate Contracting Officer  
United States Army Corps of Engineers

Signed and sealed and delivered  
In the presence of:

Witness \_\_\_\_\_

Witness \_\_\_\_\_

NOTORIAL CERTIFICATE

DISTRICT OF COLUMBIA: SS

I, \_\_\_\_\_, a Notary Public in and for the District of Columbia, do hereby certify that this \_\_\_\_\_ day of \_\_\_\_\_, 2021, **MARCIA A. DEVILLE, Real Estate Contracting Officer**, known to me or proven through satisfactory evidence of identity to be the person whose name is subscribed to the foregoing document, appeared in person and acknowledged before me that the signature on the document was voluntarily affixed by her for the purposes therein stated and that she had due authority to sign the document in the capacity therein stated.

\_\_\_\_\_  
Notary Public

My commission expires the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

ACCEPTANCE BY GRANTEE

City of Whittier, GRANTEE, hereby accepts this Quitclaim Deed for itself, its successors and assigns, subject to all of the conditions, reservations, restrictions and terms contained therein, this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

CITY OF WHITTIER, City Government

By: \_\_\_\_\_  
JIM HUNT  
City Manager

~~~~~  
STATE OF Alaska )  
 ) SS:  
COUNTY OF Whittier Recording District)

I, the undersigned, a Notary Public in and for the State of Alaska, County of Whittier Recording District, do hereby certify that this day personally appeared before me, **JIM HUNT, City Manager**, whose name is signed to the foregoing instrument and who acknowledged the same to be his free act and deed on the date shown, and acknowledged the same for and on behalf of the City of Whittier.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

~~~~~  
CORPORATE ATTORNEY'S CERTIFICATE

I, \_\_\_\_\_, acting as attorney for **City of Whittier**, herein referred to as the "GRANTEE," do hereby certify: that I have examined the foregoing Quitclaim Deed and the proceedings taken by the GRANTEE relating thereto, and find that the acceptance thereof by the GRANTEE has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the State of Alaska, and further that, in my opinion, the Quitclaim Deed constitutes a legal and binding compliance obligation of the GRANTEE in accordance with the terms thereof.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

By \_\_\_\_\_

Title \_\_\_\_\_



## EXHIBIT B

### Alaska Rail Road Corporation Spur Line Tracks



**Exhibit C**  
**Appurtenant Facilities**

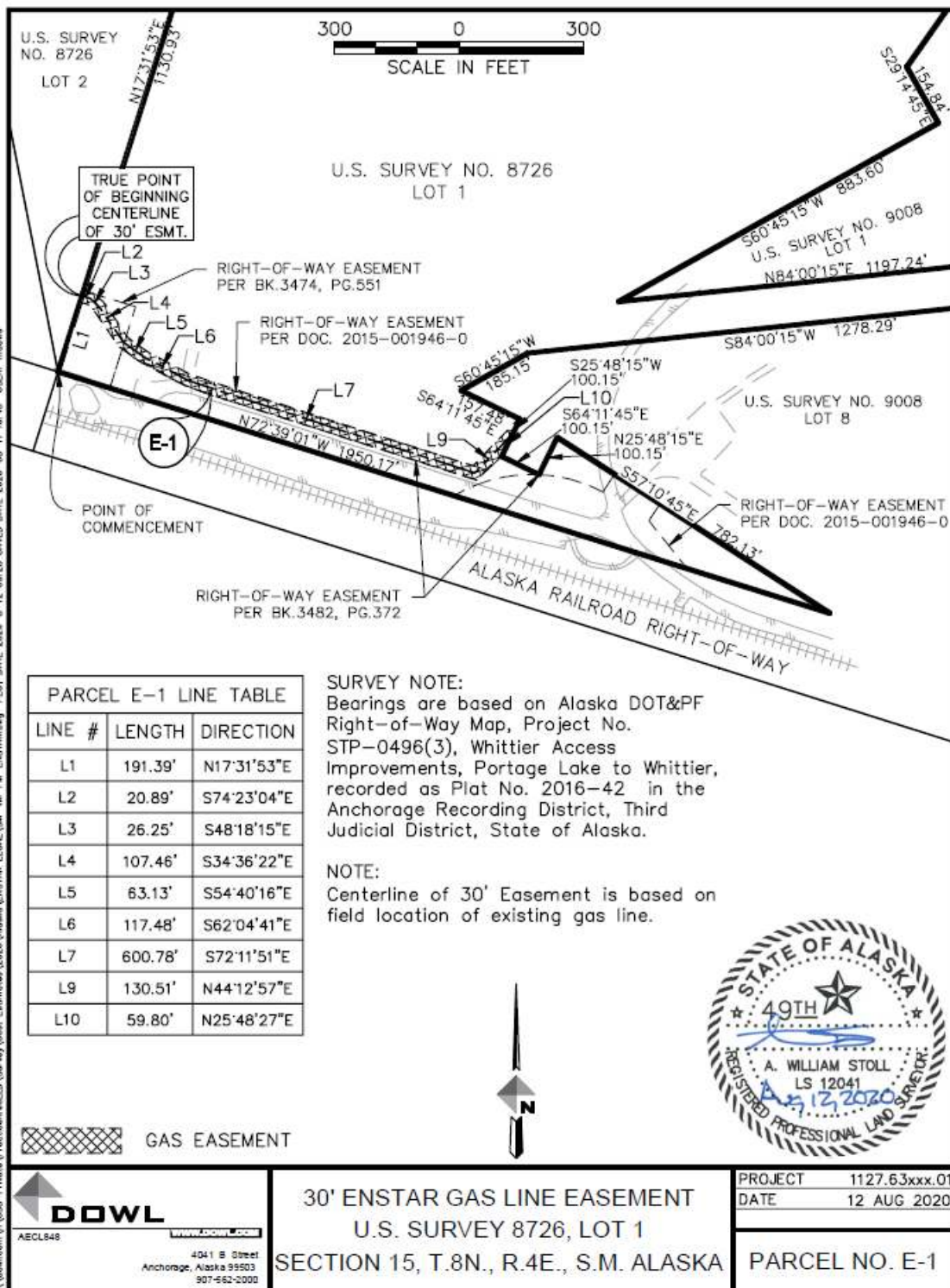
<b>Asset/Facility #</b>	<b>Acquisition Date</b>	<b>Building Name</b>
17030	7/1/1954	WATER DIST.,NON-POTABLE
17843	7/1/1966	WATER DIST POTABLE
17842	7/1/1967	WATER PIPELINE P
19851	7/1/1957	GRAVEL ROADS
20851	7/1/1957	UNPAVED ROADS
17CUL	7/1/1986	CULVERTS
17851	7/1/1967	UNPAVED ROADS
20842	7/1/1957	WATER DIST POT
19872	7/1/1972	FENCE/WALLS
21024	10/20/1967	POL PIPE LINE
20121	7/1/1966	PIPELINE ABOVE GROUND
20871	7/1/1957	FENCE/WALLS
17055	7/1/1955	RAIL-ROAD TRACKS
SUMFE	7/1/1982	FENCE/WALLS
17DYK	7/1/1982	DIKES
PADS	9/27/2019	PADS at POL TANK FARM

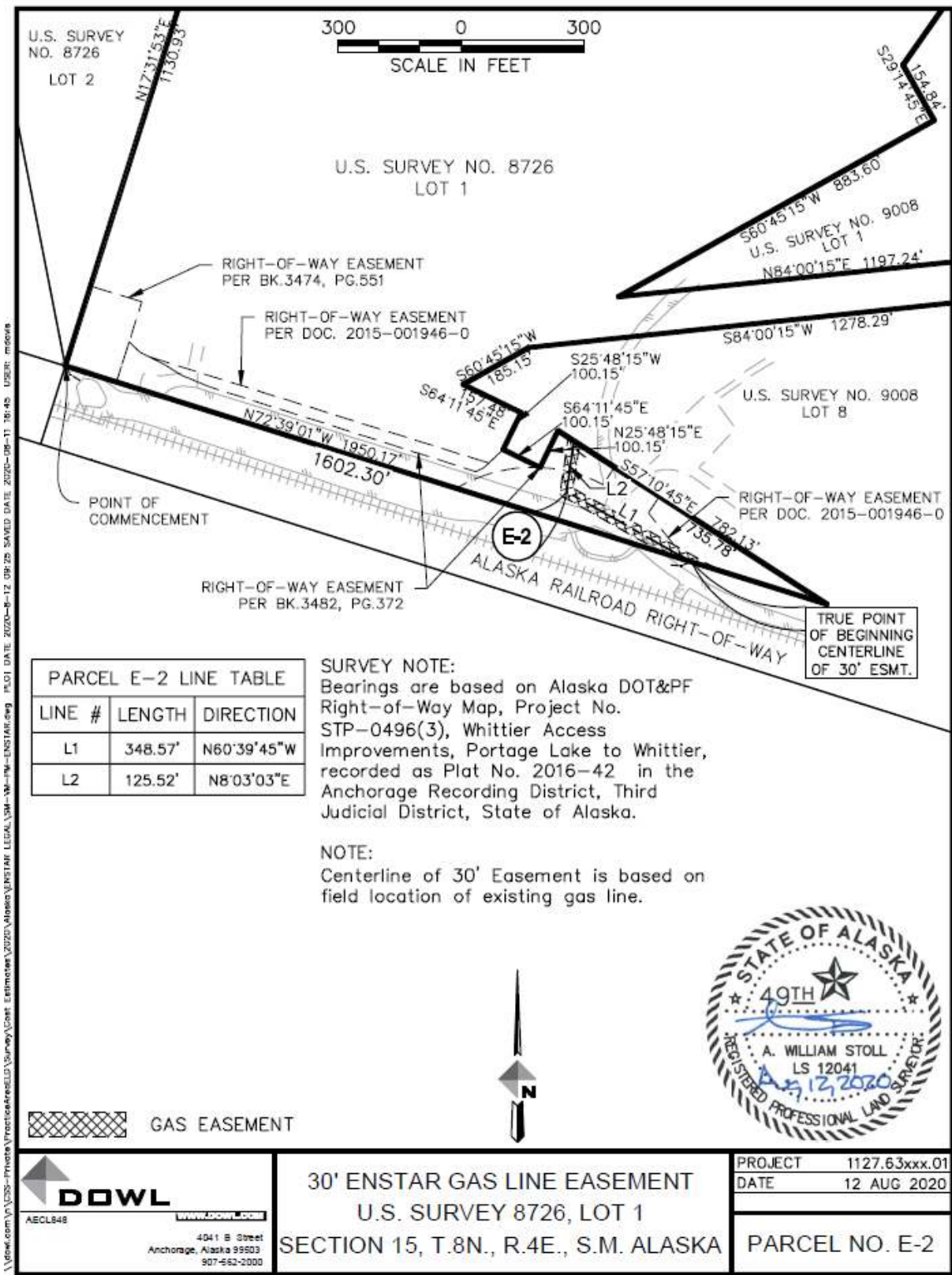
## Exhibit D

Contract #SP0600-15-D-5504, Figure 6 dated 15 August 2016. The Biovent Equipment Compound (identified as RC in the figure) consists of a 8 feet Wide x 20 feet Long x 10 feet Tall building and surrounded by a 28 feet Long x 16 feet Wide x 6 feet Tall fence.



## Exhibit E






PARCEL E-2 LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	348.57'	N60°39'45"W
L2	125.52'	N8°03'03"E

**SURVEY NOTE:**  
Bearings are based on Alaska DOT&PF Right-of-Way Map, Project No. STP-0496(3), Whittier Access Improvements, Portage Lake to Whittier, recorded as Plat No. 2016-42 in the Anchorage Recording District, Third Judicial District, State of Alaska.

**NOTE:**  
Centerline of 30' Easement is based on field location of existing gas line.



 GAS EASEMENT



AECL648 [www.dowl.com](http://www.dowl.com)

4041 B Street  
Anchorage, Alaska 99503  
907-562-2000

30' ENSTAR GAS LINE EASEMENT  
U.S. SURVEY 8726, LOT 1  
SECTION 15, T.8N., R.4E., S.M. ALASKA

PROJECT	1127.63xxx.01
DATE	12 AUG 2020
PARCEL NO. E-2	

## Exhibit F

### Excerpts from Alaska Department of Environmental Conservation Site Report: Defense Fuel Support Point Whittier

Full report can be found at:

<http://dec.alaska.gov/Applications/SPAR/PublicMVC/CSP/SiteReport/1314>

ACTION DATE	DESCRIPTION
6/05/1941	Corps of Engineers awarded contract to drill a tunnel that connected Portage on the west side of the Chugach Mountains with the Passage Canal of the east side.
3/24/1964	Fuel Spill occurred at tank 807.
11/28/1969	Fuel Spill occurred at the Pump Building.
5/02/1983	Tank 807 valve released 300 gallons of JP-4.
6/28/1985	Eleven temporary wells were installed at the tank farm
10/30/1986	Letter from EPA Alaska Operations Office to Superfund Branch. Subject: U.S. Army Whittier Oil Storage Tank regarding questions to whether or not the Oil Storage Tank site is the same site as the Whittier Old Creosote Plant.
8/27/1987	Tank 801 valve released 800 gallons diesel arctic grade.
9/09/1987	Tank 820 released 2,100 gallons of diesel fuel arctic grade (DFA).
9/15/1988	Letter from Army. Subject: It intends on meeting its obligation concerning correction of leaking underground storage tanks.
4/25/1989	Statement of work for removal of petroleum contaminated soil encountered during underground storage tank (UST) system removals/new UST installation.
7/03/1989	Tank 808 valve released 200 gallons of JP-4 jet fuel.
8/10/1989	Tank 805 valve released 50 gallons of JP-4 jet fuel.
10/31/1989	Army transferred operational responsibility of Defense Fuel Support Point-Whittier (DFSP-W) bulk fuel terminal to Defense Energy Support Center (DESC) in October 1989.
9/26/1990	Interim Guidance for Surface and Groundwater Levels. Interim cleanup guidance for contaminated surface and groundwater cleanup remediation is necessary to ensure that consistent cleanup levels are being applied by district and regional program staff.
10/12/1990	Letter from Army to Environmental Engineer UST Program-Juneau AK. Subject: The ADEC letter of October 2, 1990 for UST closures at Whittier Terminal.
4/30/1991	Tank 810 valve released unknown volume of JP-5 jet fuel.
5/20/1991	Army letter to ADEC. Subject: To confirm the agreement between ADEC and the Army, which was discussed during a meeting on May 9, 1991.
7/5/1991	ADEC received letter from Army. Subject: UST excavation activities at Whittier. Letter is in ref conversation on June 4, 1991 concerning discovery of groundwater during the excavation of UST. Samples were taken. One of the four soil samples for UST 801 revealed low level of PCBs (1.23 mg/kg).
10/16/1991	Gasoline range organics, diesel range organics, BTEX, PCE contamination.
11/15/1991	Mogas unleaded medium grade (MUM) pipeline near the southeast corner of tank farm spilled fuel (approximately 1,218 gallons estimated to be released).
11/26/1991	AK State troopers (AST) received notification from Army of the petroleum contamination discovered at the DFSP facility in Whittier.
12/3/1991	Oil program emergency response closed. Case is transferred to Contaminated Sites section for long-term remediation.
12/4/1991	Case investigation report authorized by ADEC. DFSP -W Groundwater Contamination spill date 11/26/1991 spill# 91-211-331-1.
12/18/1991	Discovery 7.9 feet of floating product on the groundwater in monitoring well MW-12.
12/18/1991	WHITTIER DFSA FUEL SPILL FIELD TRIP

2/19/1992	EPA Memorandum. Subject: Permits and Permit "Equivalency" Processes for CERCLA Onsite Response Actions FROM: Director, Office of Emergency and Remedial Response
4/9/1992	EPA Memorandum. Reply to the attention of ES-098. Subject: Toxicity of Fuels.
2/2/1993	WHITTIER FUEL TERMINAL (WFT) SITE INVESTIGATION PROJECT REPORT CONTRACT NO: DACA85-91-D-0003 DELIVERY ORDERS NOS. 2 & 15 January 1993.
2/24/1993	Letter to Army. Subject: Whittier Fuel Terminal Site Investigation Project Report Contract No. DACA85-91-D-003 Order Nos. 2 and 15 Dated January 1993
3/29/1993	Letter from EPA Federal Facilities to USAG-AK informing Army that EPA Region 10 completed the review of the WFT site Investigation Project Report.
4/14/1993	Response from Army to ADEC concerning the WFT Site Investigation report.
5/27/1993	Whittier Terminal Groundwater Sample and Analysis Plan received by Southcentral Regional Office on May 27, 1993 and ADO on June 18, 1993.
6/24/1993	Staff reviewed and commented on the WFT Sampling and Analysis Plan on May 27, 1993.
6/25/1993	Letter to Richardson Resident Office RE: ADEC/ADO review work plan/sampling and analysis 02055-1 contract DACA85-93-C-0028. T
7/19/1993	ADO received the Army COE Richardson Resident Office: Work Plan/Sampling & Analysis Plan 02055-1B, Contract DACA85-93-C-0028, Repair Fuel Storage Tanks, Whittier, AK.
8/23/1993	DFSC J. reports to ADEC spill report 93-2-1-1-237-1.
8/31/1993	DFSC DFO-AK sent correspondence to ADEC. Subject: Removal and Disposal of Hydrocarbon Contaminated Soil DFSP-W (ADEC No. 93-211-237-1).
9/20/1993	During the tank restoration project in 1993, indications were present that soil contamination was present beneath above-ground storage tanks (ASTs) 801 through 803 and 805. Therefore, each of the large ASTs (especially the older tanks, Tanks 801 through 810), is suspected to be a potential source of petroleum hydrocarbon contamination.
7/12/1994	Sound Environmental Services, Inc. submits to ADEC the Whittier Treatability Study. It is proposed that contaminated material excavated from beneath the tanks in 1994 be stabilized using the DCR process & replaced as fill in the new tank construction.
8/5/1994	ADEC called Sound Environmental. Contamination levels are based on 1993 contamination estimates.
2/22/1995	Tank 813 released 113,000 gallons of JP-5 jet fuel.
2/23/1995	SITUATION REPORT: DFSC WTF Spill NUMBER: 1 LOCATION: Whittier, 10,500 gallons of JP8 spilled.
2/27/1995	SITUATION REPORT: DFSC WTF Spill NUMBER: 2 and Final LOCATION: Whittier, AK SPILL #: LEDGER CODE #: 14873060. The spill was contained in the lined diked containment area of Tank #813.
3/9/1995	SITUATION REPORT: DFSP-W Tank 813 Spill NUMBER: 3 LOCATION: Whittier, Alaska SPILL #: 95-211-058-2 LEDGER CODE #: 14873060, 85,000 gallons have been recovered and transferred to storage tank #808. The remaining 28,000 gallons are trapped in snow and ice within the lined containment dike.
3/10/1995	Letter to DLA DFSC from ADEC Subject: Defense Fuel Supply Command - WTF Spill Disposal of Contaminated Snow and Ice.
3/13/1995	SITUATION REPORT: DFSC Whittier Tank 813 Spill NUMBER: 4 LOCATION: Whittier, Alaska SPILL #: 95-211-058-2 LEDGER CODE #: 14873060. 85,000 gallons have been recovered and transferred to storage tank #808. The remaining 28,000 gallons are trapped in snow and ice within the lined containment dike.
3/17/1995	ADEC letter to DLA RE: Spill# 95-211-054-2 DFSC Whittier Tank Farm. Advise DLA that on or about February 22, 1995 a pollution incident occurred at the Whittier DFSC Tank Farm, Tank #813, at Whittier, AK, for which DLA will be financially responsible.
3/20/1995	SITUATION REPORT: DFSC Whittier Tank 813 Spill NUMBER: 5 LOCATION: Whittier, AK SPILL #: 95-211-058-2 LEDGER CODE #: 14873060 TIME AND DATE OF REPORT: March 20, 1995; 4:30 pm DFSC is estimating current fuel recovery at 100,000 gallons.
3/21/1995	ADEC letter to DFSC. Subject: WTF Spill as response to the February 22, 1995, WTF Spill continues, it appears that the cleanup has now entered a different stage.

3/23/1995	SITUATION REPORT: DFSC Whittier Tank 813 Spill NUMBER: 6 LOCATION: Whittier, AK SPILL #: 95-211-058-2 LEDGER CODE #: 14873060. DFSC estimates current fuel recovery at 103,000 gallons.
4/4/1995	Fax from DFO-AK to ADEC regarding Monitoring Well Data (Wells 3, 4, & 5)/Fingerprint data Well 4. April 3, 1995 Fax from Groundwater Technology (GTI) to DFSC. CT&E laboratories reviewed the chromatograms from the water well sample (950329-1) and a sample of fuel collected from inside the containment dike and said they are a "Peak For Peak Match".
4/6/1995	Fax from DFO-AK to ADEC Subject: Addtl. Monitoring wells at Whittier. Have not heard any word back on the status of this permit.
4/6/1995	SITUATION REPORT: DFSC Whittier Tank 813 Spill NUMBER: 7 LOCATION: Whittier, AK SPILL #: 95-211-058-2 LEDGER CODE #: 14873060. DFSC estimates current fuel recovery at 103,000 gallons, leaving approx. 10,000 gallons not recovered.
4/17/1995	Following the meeting with all the principal parties to the cleanup of the WTF Spill, the parties agreed to an approach towards cleanup of the spill. A letter drafted formalizing some of the terms and understanding of the parties.
5/4/1995	Interim Status Report (GSI) DLA DFSC DFO-Alaska sent a status report on the cleanup & investigation of the fuel spill within dike 813 at DFSP-Won February 22, 1995.
5/5/1995	Letter from ADF&G to Groundwater Technology, Inc. Re: Outfall Structure - Unnamed Stream SE 1/4 Section 15, T. 8 N., R. 4 E., S.M.
5/8/1995	SITUATION REPORT: DFSC Whittier Tank 813 Spill NUMBER: 8 LOCATION: Whittier, Alaska SPILL #: 95-211-058-2 LEDGER CODE #: 14873060
5/18/1995	GTI sent Whittier Fuel Release, Water Sampling Plan to ADEC. All recoverable fuel in the Tank 813 diked containment area has been recovered.
6/6/1995	Fax from DFO-AK to ADEC re: Whittier Spill.
6/12/1995	DFO-AK fax to ADEC Subject: Results of samples taken on 7 June confirm results on water In the containment area meeting Alaska water quality standards.
7/26/1995	Letter from ADEC to DFSC. Subject: Application for WW Disposal Permit ADEC File No. 9521-DB002.
7/27/1995	Letter from ADEC to DFSC. Whittier Plant ADEC Permit No. 9521-DB002, Fee Invoice #400994
9/14/1995	No. DACA85-1-95-81 Whittier-Anchorage P.O.L. Pipeline lease agreement filed with Commission on October 13, 1995 was executed on September 14, 1995.
9/19/1995	ADEC has reviewed the Waste Disposal Permit Application for the discharge of treated oil contaminated water. Permit No. 9521-DB002 is hereby granted and found to be consistent with the Standards of the Alaskan Coastal Management Program, 6 AAC 80.
11/22/1995	ADEC letter to DFSC-AK Subject: WTF Spill Status.
12/15/1995	2nd Interim Status report sent by Groundwater Technology Government Services (GSI) which was authorized by DFSC Fort Belvoir Virginia.
1/19/1996	AHRM Initial Ranking
4/4/1996	Letter from ADEC SPAR Tanks and Tank Farms Section to DLA EQ Division. Subject: intended closures of DFSC bulk fuel storage facilities at Anchorage and Whittier.
8/12/1996	ADEC letter to DFSC DFSP Alexandria VA Fac ID# 817 Tank ID# 803 804. Subject: Requirement to close an UST that has been temporarily out of service for more than 12 months.
8/19/1996	Letter from DLA DFSC Ft. Belvoir VA to UST Program D. Allen.
9/25/1996	Site reranked.
9/25/1996	Draft Remedial Pilot Testing workplan received.
9/26/1996	Dave Allen received updated notification forms from DLA DFSC W.E. Goode
11/1/1996	When fully operational prior to its November 1, 1996 closing, the 85 acre DFSP-W site was fenced on all sides apparently with secure access through a gated entrance. At the time of closure, the facility included 26 fuel storage tanks, a railroad loading rack, access roads and support buildings. Five buildings were present at the site: • Office/shop (Building 17-302) • Manifold Building (Building 17-303) • Water Pumphouse (Building 17-304) • Pumphouse Building (Building 17-305) and • Guard Shack
11/5/1996	Letter sent with comments on draft workplan.

6/16/1997	Site Characterization and Remedial Pilot Testing Report, prepared by Groundwater Technology Government Services, Inc. was received.
8/28/1997	Letter from ADEC to DFSC. Subject: Department Review of 1997 Site Characterization and Remedial Pilot Testing Report, DFSP, Whittier AK (Database Record Key No. 9521-01-058-02).
9/30/1997	Response to comments letter from Fluor Daniel GTI to ADEC. Subject: Department Review of 1997 Site Characterization and Remedial Pilot Testing Report, DFSP, Whittier, Alaska Database Record Key No. 95-21-01-058-02.
10/9/1997	Site reranked by staff.
12/2/1997	Received the Department Review of 1997 Preliminary Conceptual Site Model, DFSP-W AK (Database Record Key No. 95-21-01-058-02) letter sent to DFSC. On November 7, 1997, the 1997 Preliminary Conceptual Site Model for the DFSP in Whittier AK.
3/23/1998	Comment letter sent from ADEC to DESC Subject: Risk Assessment Work Plan. ADEC, Contaminated Sites Remediation Program received a copy of the Risk Assessment Work Plan for the DFSP in Whittier AK on January 26, 1998.
4/24/1998	Approval of Risk Assessment Work Plan, DFSP, Whittier AK (Database Record Key No. 95-21-01-058-02).
4/24/1998	Baseline Risk Assessment, DFSP Whittier, Whittier, AK.
7/1/1998	Letter from ADEC to DESC. Subject: Interim Remediation and Fuel Recovery System, DFSP, Whittier AK, ADEC Reckey 95-21-01-058-02.
7/22/1998	Letter from ADEC to DESC. Subject: Baseline Risk Assessment report, DFSP, Whittier AK Database Record Key 95-21-01-058-02.
11/30/1998	Letter from DLA DEO-Alaska to STP David Allen. Re: Change of ownership for USTs at DFSPs Fairbanks, Whittier, and Anchorage.
12/18/1998	Letter sent to DEO-Alaska. Subject: ADEC Approval of Amended Interim Corrective Action Plan, Tank 813 Ballast Material DFSP, Whittier AK ADEC Database Record Key 9521-01-058-02.
1/13/1999	US Army letter to ADEC. Subject: USTs at WFT Facility ID number 817. USARAK recently assumed operation of the WFT in Whittier back from Defense Energy Office-AK (DEOA).
3/3/1999	Letter sent to DEO-AK. Subject: ADEC Approval of Interim Corrective Action Plan, Steam Sparging Combined with Air Sparging and Vapor Extraction DFSP, Whittier AK ADEC Database Record Key 95-21-01-058-02.
4/6/1999	ADEC Letter granted closure on 4/6/99, for tank site near Bldg 17-302.
4/26/1999	Letter sent to DEO-AK. On behalf of the ADEC, Contaminated Sites Remediation Program, request that initiate formation of a Restoration Advisory Board for the DFSP at the Whittier AK facility.
6/24/1999	Staff sent letter to DEO-Alaska. Subject: Groundwater Monitoring Program Whittier DFSP, ADEC Database Record Key 95-21-01-058-02.
7/23/1999	Email notification to rescind ADEC approval of the 3/3/99 interim action.
9/15/1999	Received Interim Corrective Action Plan for steam and air sparging system/fuel and vapor recovery system.
9/16/1999	Letter from ARMY to ADEC. Subject: Request for waiver of 15 day notification period for removal of USTs at WTF Fac. ID 817.
9/17/1999	Corrective Action Report DFSP-W, Tank 813 Ballast Material.
10/6/1999	Comments provided via Email on the Interim Corrective Action Plan
10/12/1999	Site reranked.
11/4/1999	T. Stevens met with Scott Pexton, Kevin Gardner, Jack Appolloni and Steve Teller to discuss the regulated underground storage tank (UST) at the Whittier Defense Fuel Terminal.
2/7/2000	Comments of ADEC, Contaminated Sites Remediation Program regarding a copy of a draft monitoring plan for the WTF site on January 19, 2000.
3/7/2000	Letter sent with approval of October 1999 interim corrective action plan to combine a steam and air sparging with soil vapor extraction to reduce the mass of hydrocarbons in the contaminated plume area near Building 17-303 and Building 17-305.

3/8/2000	Letter sent with approval of Groundwater Monitoring Plan prepared by Groundwater Technology, Inc. ADEC, Contaminated Sites Remediation Program has completed a review of a March 6, 2000 groundwater monitoring plan for the Defense Energy Support Center WTF site.
3/13/2000	During removal of 2 underground storage tanks polychlorinated biphenyls was found in soils of excavations.
6/20/2000	Meeting held from 6:00 to 7:30 PM at the P12 Shop conference room in the Public Works Building.
8/28/2000	ADEC received Spring 2000 Water Sampling Results prepared for DESC by Michael L. Foster and Associates.
9/1/2000	Site visit to check progress with interim treatment system installation and to look for potential UST locations.
9/12/2000	Army conveyed information obtained from a recent field trip to Whittier.
9/21/2000	Meeting at ADEC offices with Lieutenant Colonel Redmon and Jack Appolloni (DESC), Mark Priksat (Army), Mike Foster and Michele Turner (consultants) and Linda Nuechterlein (ADEC Storage Tanks Program) to review UST inventory information.
9/25/2000	Michael Foster and Associates sent work plan for Pumphouse UST closures MLFA Job# DESCDESC-002
9/26/2000	Tim Stevens sent letter to Army. Subject: Waiver of 15 day closure notification period and site assessment deferral for two UST located at DESP Facility in Whittier. Fac. ID 00817 Tank numbers 9 and 10.
10/20/2000	Michael Foster and Associates sent letter to Army. Subject: Pumphouse UST closures Defense Fuel Support Point MLFA Job# DESC-DESC-002.
11/8/2000	Letter from Army to Dave Allen. Subject: Registration of UST at WTF.
3/6/2001	ADEC received Quarter 4 - 2000 Water Sampling Report prepared for DESC by Michael L. Foster and Associates
3/29/2001	Meeting held at ADEC offices in Anchorage with Lieutenant Colonel Redmon, Jack Appolloni, Michael Foster, and Michele Turner to discuss monitoring results and plans to begin operation the interim system later this year.
6/26/2001	Received Punchlist/Start-up Plan, prepared by Michael L. Foster and Associates for DESC.
10/25/2001	Met with Lieutenant Colonel Redmon and Jack Appolloni of DESC and Mike Foster of Michael L. Foster and Associates to discuss groundwater monitoring results, funding issues under DSMOA, and future actions at the site.
10/26/2001	Piping Analysis DFSP – W Whittier, AK MLFA Job No. DESCDESC-002-0016 received by ADEC.
10/31/2001	Received copy of a permit application and Notice of Disposal, prepared by Michael L. Foster and Associates and submitted to the ADEC Drinking Water and Wastewater program.
12/12/2001	Fort Richardson owns the Whittier DFSP property and therefore the Fort Richardson ICs apply to it.
2/11/2002	Met at ADEC offices in Anchorage with Lieutenant Colonel Redmon and Jack Appolloni of DESC and Mike Foster and Michele Turner of Michael L. Foster and Associates to discuss groundwater sampling plans.
3/20/2002	Baseline Sampling Plan prepared by Michael L. Foster & Associates for DESC were received.
3/21/2002	Letter sent to Lieutenant Colonel Redmon with approval of the groundwater Baseline Sampling Plan.
12/26/2002	Reviewed and commented on the Groundwater Monitoring Plan for the site.
5/15/2003	Staff met with DESC and Army project managers to discuss the former WTF remediation system feasibility study.
6/18/2003	Staff received and approved the DLA-DFSC memorandum for shut down of the steam sparge/vapor extraction system at the facility.
6/18/2003	Memorandum from DESC. Subject: Shut Down of the Steam Sparge/Vapor Extraction System at DFSP-W, AK.
6/30/2003	Operations & Maintenance Reports
5/21/2004	Corrected Region from 21 to 24.
9/23/2004	Interim Action Work Plan received for DFSP-W.

9/23/2004	File number issued 2114.38.011
9/30/2004	Report received documenting the removal of the external soil and groundwater remediation system and the demolition of the Office/Shop Manifold Building and Guard House at the DFSP-W facility
11/1/2004	Groundwater monitoring report received.
3/7/2005	Based on report information provided by DESC the locational data has been updated with regards to "site legal description".
4/19/2005	Whittier DFSP. 2005 Quarter 1 (Q1) report received. Free Product analysis.
8/31/2005	2005 Quarter 2 sampling report received for DFSP-W received.
9/23/2005	As a result of 2005 Base Realignment and Closure decisions, Elmendorf AFB and Fort Richardson were realigned to establish Joint Base Elmendorf Richardson (JBER).
10/31/2005	2005 Quarter 3 Sampling Report received for DFSP-W.
1/17/2006	2005 Monitoring Report for Quarter 4 at DFSP-W.
5/3/2006	Staff reviewed and approved the 2006-Quarter 1 Sampling Report, DFSP-W, AK MLFA Job No. DESC-DESC-008-0007.
2/9/2007	Exposure Tracking Model Ranking
6/15/2007	The ADEC has received the First Quarter 2007 report with information regarding free product occurring in at least 9 wells (2007 – Quarter 1 Sampling Report).
9/25/2007	Staff received and commented on the 2007 Quarter 2 Sampling Report DFSP-W, MLFA Job No. DESC-DESC-008-0014.
4/25/2008	Draft Pumphouse Site Characterization Work Plan, DFSP-W March 31, 2008 reviewed and approved.
11/24/2008	2008 Quarter 3 Sampling Report DFSP-W, MLFA Job No. DESC-008-0020 October 27, 2008 reviewed and approved by staff.
2/24/2009	Pumphouse Site Characterization Report DFSP-Whittier January 5, 2009 reviewed and commented on by staff.
3/25/2009	Pumphouse Well Sampling Report DFSP-W, MLFA Job No. DESCDESC-008-0023.
8/12/2009	Baseline Sampling Report received.
10/14/2009	Free-Product Survey Report DFSP-W, Alaska MLFA Job No. DESCDESC-008-0024 October 8, 2009 received and commented on by staff.
11/17/2009	Interim Action Work Plan DFSP-W, AK MLFA Job No. DESCDESC-008-0027.
1/21/2010	Letter sent to Traci Bradford acting on behalf of DESC.
2/16/2010	Letter sent to Traci Bradford acting on behalf of DESC
3/2/2010	Whittier March 2010 Third Request for Uncovered Loads through Whittier Tunnel reviewed and commented on by staff.
8/9/2010	Staff reviewed and approved the Excavation Report, DFSP-W dated July 27, 2010.
9/30/2010	A groundwater monitoring event was conducted at 5 downgradient wells in September 2010 in preparation for well decommissioning.
10/1/2010	JBER MOA effective October 1, 2010.
12/1/2010	Final Site Summary Report received. Subject: Pumphouse-Manifold Bldgs.
2/7/2011	Initial ranking with ETM completed for source area ID: 72292 Name: storage tanks
2/15/2011	Draft Fiscal Year 2011 Work Plan received from DLA Energy for DFSP-W.
2/23/2011	Staff reviewed and commented on the draft fiscal year 2011 work plan.
5/16/2011	DESC's contractor had concerns and issues with the dredged material stockpile adjacent to DESC's property in Whittier and requested respond.
1/23/2012	DFSP-W FY2011 Characterization Report received.
2/22/2012	Staff received and approved final Winter GW monitoring work plan via email.
5/15/2012	Staff reviewed and commented on the characterization report for Whittier.
6/22/2012	Received Winter 2011-2012 GW Monitoring Report.
7/3/2012	Staff reviewed and commented on the 2011 GW Monitoring report.
7/11/2012	Received draft comprehensive planning document.
7/17/2012	Staff provided commented on the draft comprehensive planning document.

11/8/2012	Received draft 2012 Ecological Survey, Vertical Profiling, Surface Soil Sampling and Demolition Work Plan.
11/14/2012	Staff provided comments on the draft 2012 ecological survey, vertical profiling & surface soil sampling work plan.
3/7/2013	Received draft Work Plan Winter 2013 Groundwater Monitoring, dated March 2013 for review & comment.
3/12/2013	Received draft 2012-2013 summary report.
4/10/2013	Staff provided comments on the Hazardous Bldg. Materials Survey, Eco Survey, Vertical Profiling and Surface Soil Sampling Summary Report.
5/14/2013	Received draft Summer 2013 GW Monitoring Work Plan for review and comment.
5/20/2013	ADEC has received the final version of the 2012-2013 Hazardous Building Materials Survey.
6/3/2013	Staff provided comments on the draft GW monitoring work plan.
6/7/2013	Received draft Biosparge work plan for review and comment.
6/24/2013	Received draft ICs plan for review & comment.
7/24/2013	Staff provided review comments on the DFSP-W Institutional Controls Plan.
8/6/2013	Received Winter GW Monitoring report.
8/23/2013	Received draft Feasibility Study for review & comment.
8/30/2013	Staff provided review comments on the draft FS for the site.
9/12/2013	Staff reviewed DLA's responses to ADEC's comments. The comments were deemed acceptable and the Feasibility Study may be finalized.
12/18/2013	Received GW monitoring recommendations for review and comment.
7/31/2014	Received Winter GW monitoring report for review and comment.
7/31/2014	Received Biosparge & Biovent Pilot Study for review & comment.
8/8/2014	Staff provided comments on the draft GW monitoring report.
8/8/2014	Staff provided comments on the pilot studies report.
8/25/2014	ADEC has reviewed the responses to comments on the Whittier GW Report. The responses are acceptable. Finalize the document.
9/10/2014	Staff provided comments on the Draft Decision Document dated August 2014.
9/12/2014	Received High Water Groundwater Sampling plan for review and comment.
3/3/2015	Received draft GW monitoring report for review & comment.
3/9/2015	Staff provided comments on the draft 2014 high water groundwater monitoring report.
4/20/2015	ADEC has received the revised document: 2014 High Groundwater Monitoring Report DFSP-W.
11/19/2015	Staff reviewed and approved the 2016 High GW Monitoring report.
5/2/2016	Staff reviewed the High GW monitoring work plan.
8/29/2016	Staff provided comments on the draft remedial implementation (action) work plan.
11/17/2016	Staff provided comments on the winter GW monitoring plan.
12/28/2016	Received Summer High Groundwater (GW) Level report for review & comment.
1/10/2017	Comments on the draft summer (high) GW monitoring report.
8/28/2017	Received draft Final Remedial Implementation Work Plan received with new appendix B "Draft Vapor Intrusion Work Plan."
9/13/2017	Staff provided comments on the Remedial Implementation WP App. B VI Work Plan included in the draft final version of the work plan.
10/11/2017	Received WP for groundwater monitoring.
10/19/2017	Work plan addendum received for review and comment.
3/15/2018	Staff commented on the draft low groundwater sampling plan.
6/1/2018	Staff commented on the draft High GW monitoring plan.
6/4/2018	Staff approved transport of contaminated soil and GAC material to NRC Alaska.
8/30/2018	Staff commented on the draft LOW groundwater monitoring report.
3/5/2019	Staff commented on the low water groundwater sampling plan.
5/13/2019	Staff commented on the low water groundwater sampling report.
6/11/2019	Staff reviewed responses to comments and found them satisfactory.

**This Property is subject to an Environmental Covenant Approved by the Alaska  
Department of Environmental Conservation**

**ENVIRONMENTAL COVENANT**

Grantor(s): Department of the Army, U.S. Army Corps of Engineers, P.O. Box 6898,  
Joint Base Elmendorf-Richardson, Alaska 99506-0898 as Owner  
Grantee(s): City of Whittier, Alaska, P.O. Box 608, Whittier, AK 99693 as Holder

Check the following:

☒ Original Covenant  
☐ Amendment of Covenant

**RECITALS**

- I. This document is an Environmental Covenant (hereafter "Covenant") executed pursuant to Alaska Statute (AS) 46.04.300-46.04.390, the Act adopting the Uniform Environmental Covenants Act (hereafter, "the Act") and Title 18 of the Alaska Administrative Code (AAC) 75.325-390, Site Cleanup Rules.
- II. This Covenant subjects the Property to certain activity and use limitations as set forth herein and in accordance with the Act. The applicable activity and use limitations are described in this Covenant and are necessary to protect human health, safety, welfare or the environment and to ensure the integrity of the cleanup remedy conducted at the site. Environmental documents pertaining to the cleanup are available from the Alaska Department of Environmental Conservation (ADEC or "Department") at the Contaminated Sites Program Website at <http://dec.alaska.gov/spar/csp/>.
- III. The Property that is the subject of this Covenant is part of a site commonly known as

ADEC Site Name: Defense Fuel Support Point Whittier  
ADEC Hazard ID: 1314  
Site Address: End of West Camp Road, Whittier, AK 99693

The ADEC Site is known as Defense Fuel Support Point Whittier and is comprised of the Property (hereafter known as the former DFSP–Whittier) and the downgradient property held by the Alaska Railroad Corporation (ARRC).

The property addressed in this Covenant, the former DFSP–Whittier Property is situated in the City of Whittier, Alaska, and shown on the site map attached as Appendix A, and legally described as:

Within Township 8 North, Range 5 East, Seward Meridian, and identified as Lots 1 and 2, United States Survey 8726, dated 1 October 1986, and filed with the Anchorage Records Office on 11 October 1986.

(The “Property”)

- IV. The Property is the subject of an environmental response project under the site cleanup rules (18 AAC 75.325-18 AAC 75.390), underground storage tank regulations (18 AAC 78), federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or federal Resource Conservation and Recovery Act (RCRA). This Covenant is required because residual contamination remains on the Property that is safe for some, but not all, activities and uses. Residual contamination remaining on the Property includes the following hazardous substances, pollutants, or contaminants:

Media	Contaminants
Soil	DRO, GRO, BTEX and Lead*
Groundwater	DRO, GRO, Lead and Benzene*

\*Contaminants of Concern (COC) identified: Diesel Range Organics (DRO); Gasoline Range Organics (GRO), Benzene-Toluene-Ethylbenzene, Xylenes (BTEX), and lead. Except for lead, all of these COCs are petroleum hydrocarbons. Lead is assumed to be associated with Mogas Unleaded Medium Grade (MUM) which was stored at the site.

- V. The Department enters this Covenant as a “department” under the Act, with all attendant rights of a “department” under the Act, which include but are not limited to having a right to enforce this Covenant. This is not an ownership interest and the rights of ADEC under the Act are not an interest in real property.
- VI. For purposes of indexing in the Recorder’s office Grantor-Grantee index only, Owner shall be considered the **Grantor**, and Holder shall be considered the **Grantee**.

## COVENANT

The Department of the Army, as Grantor hereby grants to the Holder, the following covenants and declares that the Property as described in the legal description above shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1 through 11, which shall run with the Property in perpetuity and be binding on the Grantee and all parties now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using the land, as described herein. Furthermore, it is the intent of the parties that such covenants shall supersede any prior interests in the Property.

### **Summary of Environmental Actions**

The former Defense Fuels Supply Point Whittier (DFSP-Whittier) was established to support US military installation in Alaska during the Cold War. DFSP-Whittier was operated as a bulk fuel storage and distributing facility as early as 1949 through closure on 1 November 1996. Since 1989, the operator of the facility (as tenant on the property) and responsible party for petroleum cleanup at the site has been Defense Logistics Agency (DLA), formerly known as Defense Energy Support Center (DESC) – Alaska. DLA will retain responsibility for the current petroleum-related environmental liabilities on the former DFSP-Whittier property as set forth in the Decision Document (DD) for the Defense Fuels Support Point – Whittier, Alaska, Final, dated November 2015, ERM Project # 0190489.

At the time of closure, the facility included 26 fuel storage tanks, a railroad loading rack, access roads and support buildings. All tanks and support buildings have been removed.

The site was held by the Department of the Army under Public Land Order 587. The Public Law 111-383 (January 7, 2011) authorized conveyance of the former DFSP-Whittier property by the Secretary of the Army to the City of Whittier under certain conditions (See Public Law, Appendix D).

Releases of petroleum products occurred at the site during fuel handling operations. Historically, fuel contamination migrated from the surface to the groundwater table as a free-phase liquid. Contamination then spread in an east-southeast direction with groundwater flow. Numerous remediation efforts have been performed to address the contamination at the site, including steam sparging, air sparging, free-product recovery, soil vapor extraction, and excavation. Despite these efforts, subsurface soils and groundwater remain contaminated with residual fuel constituents in some areas of the Property and in areas downgradient of the site on ARRC property.

Together the Property and the downgradient ARRC property comprise the entire ADEC contaminated site known as Defense Fuel Support Point Whittier, as identified for petroleum cleanup. The DD was signed by the Alaska Department of Environmental Conservation (ADEC) on April 21, 2016. The DD sets forth a site cleanup remedy, which is necessary to protect human health, safety, or welfare, or the environment from

releases of fuel contaminants associated with this site.

The remedy, as set forth in the DD, includes:

- Bioventing on the ARRC property to focus on those portions of the smear zone that contain GRO at concentrations above the maximum allowable concentration.
- Long-term monitoring (LTM) on both the DFSP–Whittier and ARRC property, to measure changes to contaminant concentrations in groundwater over time. Monitored natural attenuation parameters will be used to measure the rate of contaminant biodegradation.
- Periodic reviews to be conducted once every five years.
- Assessment of the risk associated with vapor intrusion into buildings on the ARRC property that might be built in the future on that property.
- Institutional Controls (ICs) on both the DFSP–Whittier and ARRC properties will be implemented to protect human health, safety, and welfare until cleanup levels are reached. ICs will be layered and include the following components:
  - Governmental ICs to prevent consumption of contaminated groundwater over the entire site, to prohibit installation of potable water wells in contaminated areas. If the site is to be redeveloped, potable water must be supplied in accordance with 18 AAC 80.005-18 AAC 80.055. Alternately, potable water services may be provided by the City of Whittier as part of the public water supply and such supply would be operated in accordance with 18 AAC 80.005-18 AAC 80.055.
  - Proprietary ICs over the entire site.

Proprietary ICs site wide as listed in the DD include:

- No intrusive actions may be taken in source areas without prior written notification to and approval by ADEC. No excavations may take place without prior briefing to site workers regarding potential concerns in the source area. If previously unknown sources are encountered, ADEC will be notified following the same notification procedures outlined in 18 AAC 75.300..
- Contaminated soils requiring removal will be segregated and stored so as to prevent the spread of contamination. Analytical samples of the excavated soil will be collected and compared to the cleanup levels established in 18 AAC 75.341 Tables B1 and B2. If contaminant concentrations exceed these values, impacted soils will be stored and disposed of in accordance with 18 AAC 75.370.
- ADEC may require additional excavation and soil treatment or disposal as necessary to protect human health and the environment.
- Deed notices to inform potential future property owners regarding the nature

and extent of contamination.

The Conceptual Site Model to determine limits of potential exposure, included in the DD, identified the following potentially complete exposure pathways for the site: incidental soil ingestion, dermal absorption of contaminants in soils, dermal adsorption of groundwater, ingestion of groundwater, and inhalation of indoor air.

Demolition of structures eliminated the potential for inhalation of contaminated indoor air on the DFSP–Whittier property; however, a potential for future construction exists at the site. Because volatile fuel contamination (benzene and possibly other constituents) is present at depths of less than 20 feet, a concern exists regarding potential vapor intrusion if buildings are constructed in the future. Fluctuations in groundwater level pump fresh air into the subsurface. Because fuels biodegrade rapidly in the presence of oxygen, vapor intrusion on the DFSP–Whittier is considered unlikely.

Contaminants have not been detected in surface waters for many years. Collection of limited surface water samples had been planned as part of a number of sampling events; but the surface waters at the site were either frozen solid during the sampling effort or the stream was dry. Consequently, these surface waters would not provide a viable drinking water source.

**Activity and Use Limitations** - By acceptance and recordation of this Environmental Covenant, the Grantee, and any successors in interest, are hereby restricted from using the Property, now or at any time in the future, as specifically set forth below:

1. Interference with Remedial Action. The Grantee shall not engage in any activity on or use of the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from ADEC (18 AAC 75.395).
2. Protection of Human Health, Safety, Welfare and of the Environment. The Grantee shall not engage in any activity on the Property that may threaten continued protection of human health, safety, welfare or of the environment without prior written approval from ADEC. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as part of the remedial action or that creates a new exposure to residual contamination remaining on the Property.
3. No groundwater wells shall be installed in the area covered by the activity and use limitations without prior ADEC approval.
4. Contaminated groundwater may not be pumped, drained, dewatered, used for irrigation, dust control or any other purpose on or off the site without prior ADEC approval and may be subject to treatment, monitoring, or disposal requirements including any applicable permits.

5. Excavation, drilling, and other intrusive activities are prohibited, without prior review and approval from ADEC.
6. No grading, excavation, digging, tilling, or other disturbance of any kind of surface soils is permitted without prior review and approval from ADEC.
7. The Property shall not be used for residential purposes including use for child day care, educational facilities, playgrounds, hospitals, or similar facilities.
8. ADEC must be notified in advance of the subdivision or replat of the Property associated with these activities and use limitations. This Covenant must be included as part of future property transactions and attached to subsequent associated parcels, as determined applicable by ADEC.
9. ADEC approval is required prior to moving any soil or groundwater off site where contamination remains above applicable cleanup levels. A "site" as defined by 18 AAC 75.990 (115) means an area that is contaminated, including areas contaminated by the migration of hazardous substances from a source area, regardless of property ownership. In the future, if soil will be excavated (or groundwater will be brought to the surface (for example to dewater in support of construction) it must be characterized and managed following regulations applicable at that time and ADEC approval must be obtained before moving the soil or water off the Property.
10. Movement or use of contaminated material in a manner that results in a violation of 18 AAC 70 water quality standards is prohibited.
11. Groundwater throughout Alaska is protected for use as a water supply for drinking, culinary and food processing, agriculture including irrigation and stock watering, aquaculture, and industrial use. Contaminated site cleanup complete determinations are based on groundwater being considered a potential drinking water source. In the event that groundwater from this site is to be used for other purposes in the future, such as aquaculture, additional characterization and treatment may be required to ensure the water is suitable for its intended use.

The Quit Claim Deed transferring this property to Holder is attached and includes a site survey or diagram(s) drawn to scale that shows the Property boundaries, the approximate location and extent of remaining soil and/or groundwater contamination which is subject to the activity and use limitations described in this notice, alternative points of compliance for groundwater contamination, and the locations where confirmation soil samples were collected.

**Conveyance of Interest** - The Grantee, when conveying any interest in any part of the Property, including but not limited to title, easement, leases, or other interest must notify ADEC at least 30 days prior to conveyance, and must include in any conveyance document a complete copy of this Covenant.

**Successors** - The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns. The rights of the Grantee under this instrument are freely assignable, subject to the notice provisions hereof.

**Prior Notification for Changes in Land Use, including Proposed Construction** -

The Grantee shall provide prior notification to the Department of proposed changes in use of, applications for a building permit for activities that may affect exposure to contaminants on, or proposals for any site work affecting the contamination on, the property subject to this Covenant.

**Notices and Reporting** - Grantee shall report to ADEC every five years to document the status of compliance with the activity and use limitations described in this Covenant. Such notice and the reports should be sent to the ADEC at:

Alaska Department of Environmental Conservation  
Division of Spill Prevention and Response  
Contaminated Sites Program  
Attention: Institutional Controls Unit  
P.O. Box 111800  
Juneau, AK 99811-1800  
Or be submitted electronically to [CS.Submittals@alaska.gov](mailto:CS.Submittals@alaska.gov).

To Defense Logistics Agency (DLA) at:

Defense Logistics Agency (DLA)  
DLA Energy - Engineering, Environmental, Property Division,  
Restoration Section  
ATTN: Therese Deardorff, Environmental Protection  
Specialist/COR  
10480 Sijan Avenue, Room 326,  
Joint Base Elmendorf-Richardson, AK 99506

To the United States Government at:

Alaska District, United States Army Corps of Engineers,  
ATTN: Real Estate Division (CEPOA-RE)  
RE: DFSP-Whittier  
P.O. Box 6898  
Joint Base Elmendorf-Richards, AK 99506

**Authorizations** - Grantee shall restrict authorizations, including leases, for any portion of the Property to uses and activities consistent with this Covenant and notify all authorized users of the restrictions on the use of the Property.

**Access** - The Department, Department of the Army, and Defense Logistics Agency, including their authorized employees, agents, representatives, and independent contractors, shall have the right of access to the Property granted in connection with implementation or enforcement of this Covenant.

**Enforcement** - The Department and other parties, including parties to the Environmental Covenant, described in AS 46.04.335 are empowered to administer and enforce the terms of this Covenant using civil authority granted to them in AS 46.03. In addition, the Department may use administrative authority granted to it in AS 46.03.

**Waiver of certain defenses** - This Environmental Covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or similar doctrine as set forth in AS 46.04.325(f).

**Representations and Warranties** - Grantor hereby represents and warrants to the ADEC, Holder(s), Grantor(s) and any other signatories to this Environmental Covenant that, at the time of execution of this Environmental Covenant, the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those noted on Appendix E attached hereto.

**Amendment or Termination** - This Covenant runs with the land and is perpetual, unless amended or terminated pursuant to AS 46.04.330. Except as to the ADEC, all Holders and other signers waive the right to consent to an amendment or termination of the Environmental Covenant. This Environmental Covenant may be amended or terminated by consent only if the amendment or termination is signed by the ADEC and the current owner of the fee simple of the Property, unless waived by ADEC. If Grantee no longer owns the Property at the time of proposed amendment or termination, Grantee waives the right to consent to an amendment or termination of the Environmental Covenant.

**Controlling law** - This Environmental Covenant shall be construed according to and governed by the laws of the State of Alaska.

**Liberal construction** - Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the establishment of activity and use limitations that run with the land to effect the purpose of this instrument and the policy and purpose of the environmental response project and its authorizing legislation. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

**Joint Obligation** - If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

**Effective Date** - This Environmental Covenant is effective on the date it is recorded with the appropriate Alaska recorders' office.

**List of Appendices:**

**Appendix A – United States Survey (USS) 8726**

**Appendix B – Industrial Zoning Map**

**Appendix C – Deed Notice Map**

**Appendix D – Public Law 111-383, Subtitle E, Section 2841 dated Jan 7, 2011**

**Appendix E – Limited Liability Report**

## GRANTOR(S) SIGNATURE PAGE

The undersigned Grantor warrants she holds the title to Defense Fuel Support Point Whittier [property] and has authority to execute this instrument.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

UNITED STATES OF AMERICA

\_\_\_\_\_  
MARCIA A. DEVILLE  
Chief, Real Estate Programs Branch  
United States Army Corps of Engineers

NOTORIAL CERTIFICATE

DISTRICT OF COLUMBIA: SS

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_ 2021 that MARCIA A. DeVILLE personally appeared before me, acknowledged that she is the Chief, Real Estate Programs Branch of the UNITED STATES ARMY CORPS OF ENGINEERS described herein and who signed and executed the within and foregoing instrument to be the free and voluntary act and deed of the Grantor pursuant to AS 46.04.300-46.04.390 for the uses and purposes therein.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## SUBORDINATION AGREEMENT

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, owner of the land hereinafter described and hereinafter referred to as "Grantor", and \_\_\_\_\_, present owner and holder of the \_\_\_\_\_ [Instrument – Easement/right of way/mortgage/other lien] \_\_\_\_\_ executed by \_\_\_\_\_ [party that granted the property interest being subordinated] \_\_\_\_\_, for the use and benefit of \_\_\_\_\_, the original grantor, dated \_\_\_\_\_, 20\_\_\_\_ and recorded in \_\_\_\_\_ City/Borough \_\_\_\_\_ of \_\_\_\_\_ Recording District \_\_\_\_\_ of the State of Alaska, does hereby agree that said Instrument shall be subordinate to the interest of the Environmental Covenant under AS 46.03.300(e). Executed by [To be executed by] \_\_\_\_\_ [Party signing subordination agreement] and recorded in \_\_\_\_\_ City/Borough \_\_\_\_\_ of \_\_\_\_\_ Recording District \_\_\_\_\_ of the State of Alaska.

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

-----INDIVIDUAL

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ the undersigned personally appeared before me, acknowledged that she/he is the individual described herein and who signed and executed the within and foregoing instrument at her/his free and voluntary act and deed for the uses and purposes therein.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ at \_\_\_\_\_, Alaska.

\_\_\_\_\_  
Notary Public in and for the State of Alaska

My Commission Expires: \_\_\_\_\_

-----CORPORATION

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ the undersigned personally appeared before me, acknowledged that she/he is the \_\_\_\_\_[title]\_\_\_\_\_ of the corporation described herein and who signed and executed the within and foregoing instrument by free and voluntary act and deed of said corporation for the uses and purposes therein.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ at \_\_\_\_\_, Alaska.

\_\_\_\_\_  
Notary Public in and for the State of Alaska

My Commission Expires: \_\_\_\_\_

-----Representative

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ the undersigned personally appeared before me, acknowledged that she/he is the \_\_\_\_\_ [type of representative] \_\_\_\_\_ of \_\_\_\_\_ [name of grantor] \_\_\_\_\_ described herein and who signed and executed the within and foregoing instrument to be the free and voluntary act and deed of the grantor for the uses and purposes therein.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ at \_\_\_\_\_, Alaska.

\_\_\_\_\_  
Notary Public in and for the State of Alaska

My Commission Expires: \_\_\_\_\_



# THE CITY OF WHITTIER

*Gateway to Western Prince William Sound*

P.O. Box 608 • Whittier, Alaska 99693 • (907) 472-2327 • Fax (907) 472-2404

Date: September 14, 2021

To: City of Whittier Mayor and City Council

Thru: Jim Hunt, City Manager

From: Naelene Matsumiya, City Clerk

**RE: Confirmation of Election Officials**

For the upcoming City Election of October 5, 2021, the following persons are willing to serve as City Election Officials:

- Precinct Polling Place
  - Charlene Arneson, Chair
  - Dyanna Pratt, Vice Chair
  - Alexandra Matsumiya
  - Roselle Medez
  - Jesse Walts
- Absentee Voting Officials
  - Naelene Matsumiya, City Clerk
  - Dyanna Pratt

Please confirm the election officials stated above as required by WMC 2.06.120.

Thank you.

**CITY OF WHITTIER, ALASKA  
RESOLUTION #30-2021**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, ALASKA,  
APPOINTING THE CITY ELECTION OFFICIALS FOR THE OCTOBER 5, 2021  
REGULAR CITY ELECTION.**

**WHEREAS**, the City of Whittier will hold its Regular City election on October 5, 2021; and

**WHEREAS**, Whittier Municipal Code 2.06.110 and 120 requires the City Council to appoint election officials prior to each election.

**NOW, THEREFORE, BE IT RESOLVED BY THE WHITTIER CITY COUNCIL, that:**

**The City Council of the City of Whittier, Alaska hereby appoints the following persons to serve as election officials for the October 5, 2021 regular city election:**

- **Charlene Arneson**
- **Dyanna Pratt**
- **Alexandra Matsumiya**
- **Roselle Medez**
- **Jesse Walts**

**PASSED AND APPROVED** by a duly constituted quorum of the Whittier City Council on this 21<sup>st</sup> day of September 2021

**Introduced by:** Naelene Matsumiya, City Clerk

**Introduction date:** September 21, 2021

**ATTEST:**

---

**Naelene Matsumiya**  
City Clerk

---

**Dave Dickason**  
Mayor

Ayes:  
Nays:  
Absent:  
Abstain:

**CITY OF WHITTIER, ALASKA  
RESOLUTION #31-2021**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
WHITTIER, ALASKA, AWARDED A CONTRACT TO GMC  
CONTRACTING, INC. TO CONDUCT EARTHQUAKE REPAIRS FOR  
AN AMOUNT NOT TO EXCEED \$1,487,112.70, AND APPROPRIATING  
FUNDS**

**WHEREAS**, the City of Whittier experienced damage to City infrastructure as a result of the November 2018 earthquake, including, but not limited to: Harbor Parking and Road Triangle (PW571), Ocean and City Dock Settlement (PW572), Tidal Lagoon Slope Stabilization (PW573), Utility Settlement, Group and Blockage Repairs (PW574), Breakwater Settlement Repairs (PW576) and Kenai Street Sinkhole Repairs (PW577); and

**WHEREAS**, in accordance with Whittier Municipal Code 3.32.140 the City solicited competitive sealed bids to conduct repairs to infrastructure damaged by the earthquake; and

**WHEREAS**, the City received two responsive and responsible bids with the lowest bid coming in approximately \$700,000 higher than initial engineering cost estimates, with the bid from GMC Contracting, Inc. being the lowest bid at \$1,487,112.70, and with the City having submitted an application to FEMA to fund earthquake repairs; and

**WHEREAS**, the City has agreed to pay \$25,000 in costs to seal areas of the harbor parking lots damaged by the earthquake, representing approximately 20% of the sealing costs; and

**WHEREAS**, the City has requested funding from the State of Alaska FEMA disaster AK-18-265 to assist in performing the repairs needed to restore damaged infrastructure to pre-earthquake condition; and

**WHEREAS**, the administration recommends the construction repair award be let to the lowest responsive and responsible bidder, GMC Contracting, Inc.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of Whittier, Alaska that:

**Section 1.** The City Manager is hereby authorized to enter into a contract with GMC Contracting, Inc. to perform earthquake repairs in accordance with the Base Bid for City of Whittier Phase I and Phase II Earthquake Repairs in an amount not to exceed \$1,487,112.70.

**Section 2.** Funding in the amount of \$25,000 is hereby appropriated from the Harbor Major Repair and Replacement Fund reserve account no. 73-901-9990 to the Earthquake Fund Transfers-In account 31-390-4990 to be appropriated to grant expenditure account no. 31-820-9200, for a portion of the costs related to sealing the harbor parking lots.

**PASSED AND APPROVED** by a duly constituted quorum of the Whittier City Council this 21<sup>th</sup> day of September, 2021.

**ATTEST:**

---

Naelene Matsumiya  
City Clerk

---

Dave Dickason  
Mayor

Ayes:

Nays:

Absent:

Abstain:

## **CITY OF WHITTIER, ALASKA 2021 BUDGET POLICIES – EXHIBIT “A”**

### **1. General Fund – Fund Balance Policy**

The City should maintain a level of unassigned fund balance equal to at least 9-12 months' of expenditures and transfers-out<sup>1</sup>. A sufficient level of reserves is considered that which is able to cover unanticipated revenue shortfalls, unforeseen needs and emergencies, contribute to replacing existing infrastructure, and cover the potential shortfall of all other City funds.

- A. When the level of Unassigned Fund Balance is not within the desired range, a plan should be developed to bring fund balance to within the desired range within three years.
- B. When the level of Unassigned Fund Balance is below the desired range, withdrawals from Unassigned Fund Balance should be limited to emergency purposes.

*Fund Balance Considerations: The predictability of revenues (i.e. sales tax, PTBT, property tax); Vulnerability to single-source economic drivers (tourism, seafood industry); Volatility of expenditures; Exposure to one-time outlays (natural disasters, immediate capital outlays, state budget cuts); Drain on General Fund reserves from shortfalls in other Funds; Availability of resources in other Funds*

### **2. One-Time Revenue Policy**

One-time revenues (such as grant administration fees, sales of fixed assets, legal settlements, etc.) should *not* be utilized to fund ongoing expenditures but should be used to fund capital repairs and replacement. The use of one-time revenues to fund annual budgets promotes structural budget deficits in future years. To the extent that the General Fund Unassigned Fund Balance has reached 9 months of expenditures and transfers-out, *one-time revenues* will be allocated annually to a Capital Replacement Fund.

### **3. Revenue Stabilization Account Policy**

The City may create a revenue stabilization account to maintain financial resources to protect against the need to reduce service levels or raise taxes or fees due to temporary revenue shortfalls or unpredicted one-time expenditures. The balance in this account could, for example, be equal to ten percent of the General Fund's annual revenues<sup>2</sup>. This level of reserve is based on the City's increasing dependence on the visitor and seafood industries for the generation of sales tax, PTBT, fish taxes, CPV funds, camping fees, etc.

### **4. Accrued Annual Leave Funding Policy**

The City should consider establishing an internal service fund for the purpose of accumulating cash to pay for accrued but unused portion of annual leave for General Fund employees. This account would be designated solely for the payment of accumulated leave.

### **5. Capital Replacement Fund Policy**

The City should consider designating 50% of the prior year's annual surplus<sup>3</sup> into a Capital Replacement Fund for the purpose of financing major capital maintenance and repairs (defined as items in excess of \$20,000) in any year where the General Fund Unassigned Fund Balance is within the band of established policy levels<sup>4</sup>. Expenditures from this Fund require

<sup>1</sup> In 2020 the Policy requires Unassigned Fund Balance equal to between \$1,498,973 and \$2,248,460

<sup>2</sup> Currently \$270K. The City will develop a plan aimed at reaching this goal by 2023.

<sup>3</sup> Defined as the difference between revenues plus transfers-in versus expenditures plus transfers-out.

<sup>4</sup> Limit on Allocation of Surplus: The allocation of surplus funds from the General Fund to the Capital Replacement

specific appropriation from the City Council before being spent.

**6. Sales of General Fixed Assets**

Revenue from the sales of general fixed assets should be added to the Capital Replacement Fund.

**7. Recurring Fund Source for Capital**

The City should seek recurring funding sources to fund capital needs so that capital spending is not given last priority in competing for limited financial resources.<sup>5</sup>

**8. Motor Pool Appropriation Control**

Motor Pool reserves should be preserved for the sole intended purpose of replacing City heavy equipment and vehicles, based on the established goals of minimizing fluctuations to annual operating budgets and exercising fiscal prudence in saving for replacement of the City's fleet.

A. Loans issued from the Motor Pool to the other City Funds (if any) will be repaid with interest to the Motor Pool in order to safeguard the viability of the long-range vehicle and heavy equipment replacement plan.

B. The City will establish a Fleet Replacement Plan to be approved by the City Council. The Plan will allow for the routine and timely replacement of City vehicles and equipment at certain mileage or hour intervals per unit type, with the primary goals of maximizing safety, minimizing repair costs and achieving reasonable trade-in value.

**9. Enterprise Fund Rate Reviews**

Utility and Harbor rates should be reviewed annually to determine if they are adequate to cover annual operating and capital costs, plus the annual cost of depreciation. Tariffs should be adjusted to rise based on CPI annually, to reduce rate shock. Recommendations for annual rate adjustments beyond CPI should be made annually to the City Council.

**10. Enterprise Fund Depreciation (MRRF) Funds**

The City should establish a major repair and replacement fund (MRRF) for each of its major enterprise funds (Boat Harbor, Water and Wastewater, Delong Dock).

**11. Depreciation Funding Policy**

The policy of the City shall be to work toward funding a minimum of 100% of the annual rate of depreciation, recognizing that failure to establish adequate reserves for the replacement of plant and equipment shifts the financial burden of such major repairs and replacement, to future generations, creating an imbalance of inter-generational equity.

“Funding depreciation” is defined as either placing equivalent cash into the MRRF Fund, or spending on capital repairs valued greater than \$20,000 such that the total amount invested in major maintenance and repair is at least 100% of the annual depreciation. Investments in new infrastructure are not considered investments in capital for the purposes of depreciation funding, since they do not replace existing infrastructure.

*Exception:* Where Council determines that a specific enterprise fund asset will not be replaced at ratepayer or taxpayer cost, but will only be replaced through grants, or not be replaced at all, it may be prudent not to fund depreciation on that item.

Fund should occur only when the General Fund Unassigned Fund Balance exceeds 6 months' reserves and should not draw the unassigned fund balance below 6 months' reserves.

<sup>5</sup> The City has not yet identified a source of funds to fund capital needs. The City could, for example, decide to allocate future State Revenue Sharing for capital purposes in the future.

**12. Tax Cap Policy**

Periodically review the City's tax cap on sales of items in excess of the cap to ensure that the cap does not erode the City's funding availability over time.

**CITY OF WHITTIER, ALASKA  
RESOLUTION #32-2021**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, ALASKA  
AUTHORIZING THE APPROVAL OF THE CITY OF WHITTIER EMPLOYEE POLICY  
AND PROCEDURES MANUAL**

**WHEREAS**, Whittier Municipal Code Section 2.70 *Personnel Administration* establishes a system of uniform personnel regulations with the aim of improving the quality of personnel administration and providing uniformity in human resource matters; and

**WHEREAS**, the Whittier Municipal Code establishes the general regulations guiding administration of the City's personnel system, including general provisions, employee conduct, grievance committee, organization and delegation of authority, classification of positions, salary administration, employment benefits, recruitment and selection, performance evaluation, employee development, and other miscellaneous provisions; and

**WHEREAS**, the Whittier City Council passed Resolution #58-2015 on July 21, 2015 to rescind Resolution 999-12 (passed on March 6, 2012 – adopting a Policies and Procedures Manual) on the basis that that the Policy and Procedures Manual purportedly duplicated what was already established by Municipal Code Code and created confusion; and

**WHEREAS**, more recently, the Whittier City Council directed administration to bring forward a new Employee Policy and Procedures Manual with the aim of providing best employment practices and creating uniformity of policies that will carry forward from one administration to the next; and

**WHEREAS**, the new Employee Policy and Procedures Manual establishes employment expectations, promotes uniformity of policy, and promotes a harmonious workplace by clarifying employment expectations around a wide range of topics including not only those addressed within City Code, but more broadly related to topics such as use of cell phones, business atmosphere, progressive discipline, reporting of work-related injuries, Alaska's Family Leave Act, use of City internet and computers to promote cyber security, prohibitions regarding smoking and drugs and alcohol, drug testing, workplace violence, sexual harassment, acceptance of gifts, traveling on behalf of the City, accident reporting, and many other important policies that promote a safe and productive work environment; and

**WHEREAS**, the Employee Policy and Procedures Manual has been reviewed by all City staff who provided comments and input, by the City attorney, and in a work session with the Whittier City Council, with the aim of obtaining consensus about the employment practices governing City of Whittier employees; and

**WHEREAS**, it is necessary to ensure employees are aware of the laws, rules, and regulations that govern their employment, and the Employee Policy and Procedures Manual provides a handbook for employees to easily find topics related to their employment and employee standards of conduct; and

**WHEREAS**, the Employee Policy and Procedures Manual will be periodically reviewed and amended as needed to promote employment best practices.

**NOW, THEREFORE, BE IT RESOLVED THAT:** The Whittier City Council by this resolution hereby directs the Employee Policy and Procedures Manual be distributed to all current and future employees.

**PASSED AND APPROVED** by a duly constituted quorum of the city council this 21<sup>st</sup> day of September, 2021.

ATTEST:

---

Naelene Matsumiya  
City Clerk

---

Dave Dickason  
Mayor

Ayes:  
Nays:  
Absent:  
Abstain:

## **ACTION MEMORANDUM REGARDING RESOLUTION 33-2021**

To: Whittier City Council

From: City Manager Hunt

Re: Resolution No. 33-2021

---

### **INTRODUCTION**

Resolution No.33-2021 has been proposed by the City Manager to approve an assignment of a ground lease of the property described in the Resolution from Young S. and Kyung Yoo to Tatitlek Sound Holdings LLC, while also protecting the City from assigning interest in City Property that is needed to meet the City's goals and objectives under the City Code, the City Comprehensive Plan and its Harbor Development Plan. City Council has repeatedly requested that City Administration review City lease policies and terms and ensure that any future lease negotiations comply with the City Comprehensive Plan, Harbor Development Plan, and the Management Plan with the Alaska Railroad Corporation. The Resolution recommends that consent to the assignment of the lease at issue be granted subject to amendments to the current lease that comply with these directives and goals of Council.

It is noted that the proposed lease amendments provide for a change in use (from a restaurant to commercial/retail uses), and the term of the amended and restated lease, with renewals, exceeds twenty (20) years. Under WMC 3.36.320(A), Council may approve such leases if it determines from the purpose of the lease or the nature of the improvements which may be placed thereon that a longer term would benefit the City. In this regard, it is noted that the lease is a ground lease, and tenants generally make substantial improvements to City owned land in exchange for longer termed leases. To this end, its business plan, Tatitlek intends to undertake approximately \$100,000+ in improvements to the Property as a new tenant. A copy of the business plan has been reviewed by City Administration, and is included for Council review. In addition, City Administration was able to renegotiate the rental rate to an amount consistent with the requirements of the WMC, and were able to negotiate other terms favorable to the City which were not present in the initial lease.

### **RECOMMENDED ACTION**

The City Administration recommends Council adopt the Resolution and approve the essential terms contained within it. Tatitlek desires to proceed with the assignment and amendments being proposed, the adoption of the Resolution permits the City Administration to work with the Yoos and Tatitlek owners to get any transfers in place.

### **STAFF REVIEW**

This Ordinance has been reviewed by the City Attorney, the Finance Director, the Assistant City Manager, and the City Manager. The City Attorney and Assistant City Manager will be available at the September regular meeting to address any questions Council may have regarding the Resolution.

Sponsor(s): City Manager  
Introduction Date: 9/21/2021  
Adoption Date: \_\_\_\_\_

**CITY OF WHITTIER, ALASKA  
RESOLUTION #33-2021**

**A RESOLUTION OF THE CITY OF WHITTIER, ALASKA APPROVING THE ASSIGNMENT OF THE LEASE BETWEEN THE CITY OF WHITTIER AND YOUNG S. AND KYUNG YOO SUBJECT TO AND CONDITIONAL UPON AMENDMENTS TO THE LEASE, APPROVING THE ESSENTIAL TERMS OF THE ASSIGNMENT TO AND AMENDMENT OF THE LEASE WITH TATITLEK SOUND HOLDINGS LLC AND THE ESSENTIAL TERMS OF THE AMENDED AND RESTATED LEASE WITH TATITLEK SOUND HOLDINGS LLC, AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS WITH THE PARTIES INCORPORATING THE ESSENTIAL TERMS APPROVED IN THIS RESOLUTION**

**WHEREAS**, the City of Whittier (“City”) and Young S. and Kyung Yoo entered into a lease Lots 6 & 7 Harbor Triangle, Whittier Recording District, Third Judicial District, State of Alaska (the “leasehold premises”) on or about March 12, 2007, which was recorded in the Anchorage Recording District on January 4, 2008 as instrument number 2008-000316-0 (the “Current Lease”); and

**WHEREAS**, Tatitlek Sound Holdings LLC (“Tatitlek”) has expressed interest in the assignment of the Current Lease to it and has provided the City with information demonstrating that Tatitlek is in good standing, a request for assignment, and a proposed business plan, and Tatitlek intends to use the leasehold premises in for commercial/retail uses that are different than those approved by the Current Lease and for a term in excess of twenty (20) years;

**WHEREAS**, the change in use for the leasehold premises requires consent from the City;

**WHEREAS**, under Whittier Municipal Code (WMC) Section 3.36.320(A), the Council may approve leases in excess of twenty (20) years if it determines from the purpose of the lease or the nature of the improvements which may be placed thereon that a longer term would benefit the City;

**WHEREAS**, the City Administration has engaged in preliminary negotiations with Tatitlek to increase the yearly Rent Rate, and to provide for adjustments consistent with the requirements of the WMC, and to negotiate other terms favorable to the City that are not included in the Current Lease;

**WHEREAS**, in light of the proposed business and development goals expressed by Tatitlek in its business plan, the City Manager and Administration support the proposed

assignment and amendments to the Current Lease, and City Council agrees with the proposed change(s) in use as being beneficial to the commercial/retail development of the City;

**WHEREAS**, the City Council has determined that the nature of the lease as a ground lease, the significant improvements proposed by Tatitlek, along with the amendments to the lease agreed to by Tatitlek, a longer-term lease will provide a benefit the City;

**WHEREAS**, the City Manager is seeking approval of the essential terms of an assignment and amendment to the Current Lease, in substantially the form presented to City Council in connection with its consideration of this Resolution.

**NOW, THEREFORE, the Whittier City Council resolves;**

Section 1. Whittier City Council hereby approves the assignment of the Current Lease to Tatitlek, subject to and conditional upon the following essential terms:

Term A: The Current Lease shall be amended in accordance with terms and conditions set forth in the Amended and Restated Lease, with the same essential terms as presented to Council.

Term B. Tatitlek shall make improvements to the leasehold premises consistent with those described in its business plan, the construction schedule incorporated into the amended lease, and construction plans to be approved by the City professional staff.

Term C. Rent for the leasehold premises shall be increased immediately increased to \$6,930 per year (or \$577.50 per month), plus applicable sales tax, but subject to adjustment as provided in the amended lease.

Section 2. City Council's approval of the assignment of the Current Lease is subject to and conditional upon the adoption of the essential terms in Section 1 of this Resolution.

Section 3. The form of the proposed amended and restated lease presented to City Council is hereby approved, the City Council having concluded from the purpose of the amended and restated lease and/or the nature of the improvements to be placed on the leasehold premises that a longer term would benefit the City. The City Manager has authority to execute the assignment and amended and restated lease on such terms and conditions as presented to City Council.

Section 4. This resolution shall be effective immediately upon adoption.

**PASSED AND APPROVED** by a duly constituted quorum of the Whittier City

Council on this \_\_\_\_ day of \_\_\_\_\_, 2021.

---

Dave Dickason  
MAYOR

ATTEST:

---

Naelene Matsumiya  
CITY CLERK

Ayes:  
Nays:  
Absent:  
Abstain:

## **ANCHORAGE RECORDING DISTRICT**

**Recording requested by and  
after recording, return to:**

### **AMENDED AND RESTATED LEASE**

THIS AMENDED AND RESTATED LEASE ("Lease") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date"), by and between the City of Whittier, a municipal corporation ("Landlord"), and Tatitlek Sound Holdings LLC, an Alaska limited liability company ("Tenant").

### **RECITALS**

A. Landlord is the owner of certain Leasehold Premises ("Whittier Land") located in Whittier, Alaska and more particularly described as Lots 6 & 7 Harbor Triangle, Whittier Recording District, Third Judicial District, State of Alaska and shown more particularly in cross-hatching on the survey annexed hereto as Exhibit A (the "Real Property").

B. Landlord leased the Real Property to Young S. and Kyung Yoo by Lease dated March 12, 2007, and recorded in the Anchorage Recording District on January 4, 2008, as instrument number 2008-000316-0 (the "Original Lease"). The Lease permitted use of the Real Property as an Oriental/Asian Restaurant in accordance with the provisions of the Original Lease. The Real Property and all improvements constructed thereon are hereinafter referred to collectively as the "Leasehold Premises."

C. The Original Lease is being assigned to Tenant contemporaneously with the execution of this Amended and Restated Lease, and Landlord's consent to the assignment of the Original Lease is contingent upon Tenant executing this Amended and Restated Lease.

D. The parties desire to amend and restate the Original Lease by this Amended and Restated Lease to authorize a change in the permitted use of for the Leasehold Premises and to permit such other changes as agreed to by the parties (this Amended and Restated Lease is hereinafter referred to as the "Lease").

## AGREEMENTS

NOW, THEREFORE, it is mutually agreed between Landlord and Tenant:

### SECTION 1. PREMISES

1.1 Lease. For and in consideration of Tenant's covenant to pay the rental and other sums provided for in this Lease and to perform the other covenants contained in this Lease, Landlord leases to Tenant; and Tenant leases from Landlord, the Leasehold Premises.

1.2 Term. The term of this Lease shall commence as of the Effective Date. The term of this Lease shall expire (unless renewed pursuant to Section 1.3 below) on March 12, 2042, or earlier terminated pursuant to the terms hereof or by agreement of the parties hereto.

1.2.1 Term to Be Inclusive. Whenever the word "Term" is used in this Lease, it shall be deemed to include the term described in Section 1.2, together with any exercised renewal period as described in Section 1.3.

1.3 Tenant's Right to Renew. Unless there shall exist a material default hereunder on the part of the Tenant, Tenant shall have the right to renew the Term at the end of the initial Term described in Section 1.2 above for one (1) additional period of thirty-five (35) years ("Renewal Period") subject to the following provisions:

1.3.1 Notice. Notice of the exercise of such right to renew shall be given to Landlord prior to the beginning of the twelfth (12th) month preceding the date the initial Term is to end.

1.3.2 Terms and Conditions. During the Renewal Period all terms and conditions of this Lease shall continue to apply except that the rental rate will be established as described in Section 2.2. As required by Whittier Municipal Code ("WMC") Section 3.36.350, any renewal of the Lease shall be subject to the provisions of the WMC then in effect at the time of renewal.

1.3.3 This section is intentionally omitted from this lease.

1.4 Landlord's Warranties. Landlord represents and warrants that:

1.4.1 To the best of Landlord's actual knowledge, the Leasehold Premises is, as of the Effective Date, free of all liens and encumbrances;

1.4.2 Landlord has the authority to enter into this Lease and its execution and delivery by Landlord has been duly authorized;

1.4.3 Tenant shall at all times from and after the Effective Date and for the balance of the Term of this Lease have the right to peacefully and quietly have, hold and enjoy the Leasehold Premises.

1.5 Tenant's Warranties. Tenant represents and warrants that Tenant has the authority to enter into this Lease and its execution and delivery by Tenant has been duly authorized.

1.6 Use. The Leasehold Premises is leased to Tenant for the purpose of constructing and thereafter maintaining commercial and/or retail space in the existing building and improvements constructed on the Leasehold Premises (the "Improvements"), for use by Tenant or any permitted subtenant for the production and sale of salt products and a native art display and gift shop, and for no other purpose unless such use is approved by Landlord in writing prior to commencement of such use.

1.6.1 Continuous Operation. During the Term, Tenant shall cause the Leasehold Premises to be operated and open to the public for the permitted uses under this Lease during normal business hours standard for the industry of which the businesses are a part of. If Tenant fails to continuously operate on the Premises, or any portion thereof, for a period of more than fifteen (15) consecutive days without Landlord's written consent, which shall not be unreasonably withheld, then Landlord, at its option, upon twenty (20) days written notice to Tenant and right to cure, may declare an Event of Default and exercise its rights and remedies hereunder.

1.6.2 Compliance with Laws. Tenant covenants that, at no cost or expense to Landlord, Tenant shall comply with all applicable laws, ordinances, and regulations of duly constituted public authorities now, or hereafter enacted, in any manner affecting the Leasehold Premises or the sidewalks, alleys, streets, and any right-of-way adjacent thereto or any buildings, structures, fixtures, and improvements, or the use thereof, whether or not any such laws, ordinances, or regulations, which may be hereafter enacted, involve a change of policy on the part of the governmental body enacting the same. Tenant agrees to hold Landlord financially harmless (a) for the consequences of any violation of such laws, ordinances, and/or regulations and (b) from all claims for damages on account of injuries, death, or property damage resulting from such violation. Tenant further agrees that they will not permit any unlawful occupation, business, or trade to be conducted on the Leasehold Premises or any use to be made thereof contrary to any law, ordinance, or regulation as aforesaid with respect thereto.

The operation and maintenance of all sanitation, food service, and water supply method systems and facilities shall comply with the standards of the State of Alaska Department of Environmental Conservation and the United States Public Health Service as well as any and all other government entities regulating the same.

1.6.3 Compliance with Insurance Requirements. Tenant covenants that it will observe and comply with the requirements of all policies of liability, fire and other

policies of insurance required to be maintained by Tenant at any time in force with respect to the Leasehold Premises, and Tenant shall, in the event of any violation or attempted violation of the provisions of this section by any subtenant, take steps promptly upon knowledge of such violation or attempted violation, to remedy or prevent the same, as the case may be.

1.6.4 Contests. Tenant shall have the right, after prior written notice to Landlord, to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant or Landlord or both, without cost or expense to Landlord, the validity or application of any law, ordinance, order, rule regulation or requirement of the nature referred to in Section 1.6.1 hereof, subject to the following:

(a) If by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrence of any lien, charge or liability of any kind against the Leasehold Premises or any part thereof and without subjecting Tenant or Landlord to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding; or

(b) If any lien, charge or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest as aforesaid and delay as aforesaid, provided that such delay would not subject Landlord to criminal liability or fine, and Tenant (i) furnishes to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence.

Landlord, without cost to it, shall, subject to the foregoing, execute and deliver any appropriate papers which may be necessary or proper to permit Tenant so to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement.

1.7 Maintenance and Repairs. Tenant, at its expense, will keep the Leasehold Premises in good and clean order and condition, and will promptly make or cause others to make all necessary or appropriate repairs, replacements or renewals thereof, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen. All repairs, replacements and renewals shall be substantially equal in quality and class to the original work. Tenant waives any rights created by any law now or hereafter in force to make repairs to the Leasehold Premises at Lessor's expense, in that Landlord and Tenant have by this Lease made specific provision for such repairs and have their respective obligations thereto. Tenant, at its expense, will do or cause others to do every act necessary or appropriate for the preservation and safety of the Leasehold Premises by reason of or in connection with any excavation or other building operation upon the Leasehold Premises or any adjoining property, including, without limitation, all shoring up of foundations and walls of the Improvements or of the ground adjacent

thereto, whether or not the owner of the adjoining property shall be required by any legal requirement to take such action or be liable for failure to do so.

1.8 Local Management. Tenant agrees that the business of the Tenant within or upon the Leasehold Premises shall have local management and a manager or agent named by the Tenant who shall be responsible for operations of the facility and authorized by Tenant to make all appropriate business and management decisions insofar as those decisions relate to or bear upon Tenant's relationship with Landlord. On or before Tenant's execution hereof, Tenant shall furnish to Landlord, in writing, the name, address, and phone number of its local agent and shall notify Landlord thirty (30) days in advance, in writing, of any change in that information.

## SECTION 2. RENT

2.1 Annual Rent. For the period commencing on the Effective date, through and including December 31, 2021, Tenant shall pay total monthly minimum rent in the amount of \$606.38 per month (consisting of rent in the amount of \$577.50 plus applicable Whittier sales tax). Commencing January 1, 2022, Tenant covenants and agrees to pay Landlord for the Leasehold Premises an annual minimum rent ("Rent") of \$6,930 (\$20 per square foot times the number of square feet in the Leasehold Premises), plus applicable Whittier sales tax, payable in twelve (12) monthly installments, due, in advance, on the first day of each month, subject to adjustment as provided in Section 2.2 and Section 2.3.

2.2 Adjustment of Rent. The annual Rent payment shall be adjusted on January 1, 2025 and on the same date every five (5) years thereafter (each a "Rental Adjustment Date"). The adjusted annual Rent payment to be paid under the terms of this Lease shall be based on the appraised fair market value of the Leasehold Premises at the highest and best use of the Leasehold, and shall be set at an amount equal to ten and one-half percent (10.5%) of the appraised fair market value of the Leasehold Premises (the "Fair Market Rental Value"); provided, however, in no event shall the adjusted annual Rent be less than the annual Rent due for the year prior to the Rental Adjustment Date. The highest and best use of the Leasehold Premises shall be determined without regard to Tenant's intended or actual use of the Leasehold Premises unless that use is coincidentally the highest and best use of the Leasehold Premises.

Landlord shall complete an appraisal by July 1 of the year prior to the Rental Adjustment Date and deliver a copy of the appraisal report to Tenant not less than ninety (90) days before each Rental Adjustment Date. Within thirty (30) days after receipt of the Landlord's appraisal, Tenant shall notify Landlord that they accept or reject the appraisal. If accepted, the adjusted annual Rent will be calculated effective January 1 of the next calendar year. If rejected, the Objection Procedure below will be followed.

2.2.1 Procedure for Appraisal Rent Adjustment. To adjust the annual Rent as of any Rental Adjustment Date, the Landlord shall, at its own expense, retain an independent State of Alaska certified MAI appraiser (Member, Appraisal Institute), who

shall determine the fair market value of the Leasehold Premises, exclusive of improvements placed thereon by Tenant at any time but inclusive of all improvements made by the Landlord (including those made by the Landlord before or subsequent to this Lease). The appraiser's report shall be delivered to Tenant not less than ninety (90) days before the Rental Adjustment Date. The appraiser's determination of fair market value of the Leased Premises shall constitute a final binding determination of the fair market value until the next Rental Adjustment Date, unless Tenant objects to Landlord's appraiser's determination of the fair market value for the Leasehold Premises.

a. Objection Procedure. If the Tenant objects to the Landlord's appraiser's determination of the fair market value for the Leasehold Premises, Tenant shall give written notice to the Landlord of its objection within thirty (30) days of receipt of the appraiser's report, and Tenant shall then engage an independent State of Alaska certified MAI appraiser (Member, Appraisal Institute) at Tenant's expense to make an appraisal of the fair market value of the Leasehold Premises.

If Tenant's appraisal determines a fair market value that varies from that determined by the Landlord's appraisal by no more than twenty percent (20%), then the fair market value of the Leasehold Premises shall be the average of the fair market value rates determined by the two appraisals. If Tenant's appraisal determines a fair market value that varies from the Landlord's appraisal by more than twenty percent (20%), then, unless the Landlord and Tenant agree on a rate themselves, the adjusted fair market value for the Leasehold Premises shall be determined in accordance with the Arbitration Clause contained in this Lease.

Notwithstanding the above, the exercise by either the Landlord or the Tenant of the Objection Procedure relating to the Rent adjustment described in this section shall not postpone Tenant's obligation to pay annual Rent at the rate established by the Landlord. Tenant shall pay the amount of annual Rent established or adjusted by the Landlord until the question of objection to the fair market value is finally resolved. At such time the objection to the fair market value is resolved, an appropriate credit or adjustment shall be made retroactive to the date the adjusted Rent rate was established by the Landlord or in cases where the Landlord failed to obtain an appraisal or deliver the appraisal report to the Tenant, to the Rental Adjustment Date.

If, for any reason, the Landlord does not complete the appraisal or deliver a copy of the appraisal report to Tenant at least ninety (90) days before the Rental Adjustment Date, the Landlord may proceed to complete the appraisal or deliver a copy of the appraisal report to the Tenant at any time thereafter. However, any such adjusted annual Rent rate shall not be effective until the payment due date immediately following the date the Landlord delivers the appraisal report to Tenant.

2.3 Interim Rent Adjustments (CPI Adjustment). For each year, the annual Rent payment shall be increased beginning January 1 in an amount that reflects the increase, if any, in the cost of living for the previous full year as stated in the Consumer Price Index,

All Urban Consumers, Anchorage, Alaska Area, All Items 1967=100 ("CPI"), as published by the United States Department of Labor, Bureau of Labor Statistics for the most recent period. For purpose of clarity, for the annual Rent payment due on January 1, 2023, the CPI Adjustment under this Section shall utilize the CPI for the full year of 2021, as the 2022 CPI would not be available. If the CPI is revised or ceases to be published, the Lessor shall instead use such revised or other index as most nearly approximates the CPI for the relevant period and make whatever adjustment in its application as may be necessary, in the Lessor's sole discretion, to accomplish as nearly the same result as if the CPI had not been revised or ceased to be published.

2.4 Rent Payments. Rent shall be payable in equal monthly installments in advance in lawful money of the United States of America on the first day of each calendar month during the term of this Lease. All payments of Rent shall be made by Tenant to Landlord without notice on demand, at the place provided in Section 18.12. In the event any payment of Rent shall not be paid on or before five (5) days following the due date as provided in this Section, the delinquent amount shall be due together with interest accruing at the rate of eight percent (8%) from the due date until the date of payment.

2.5 Pro Rata Portions of a Month. If the Effective Date occurs, or the Term expires, or there is to be a partial abatement of rental pursuant hereto, or an end to such abatement effective, on a date other than at the end or start of a calendar month, the Rent for such month shall be prorated for the month involved on the basis of the actual days in such month.

2.6 Offset of Rent. Rent shall not be withheld in whole or part because of an offset or counterclaim by Tenant.

### SECTION 3. ASSESSMENTS, SUBDIVISION AND SURVEY, AND UTILITIES; IMPOSITIONS; CONTEST OF IMPOSITIONS

3.1 Utilities. Tenant shall pay or cause to be paid when due, and shall indemnify, protect, defend and hold harmless Landlord and the Leasehold Premises from, all charges for public or private utility services to or for the Leasehold Premises during the Term, including without limiting the generality of the foregoing, all charges for heat, light, electricity, water, gas, telephone service, garbage collection and sewage service. Landlord shall have no liability whatsoever for the failure of any such service for any reason.

3.2 Impositions. Tenant shall pay when due and before any interest, penalty, fine or cost which may be added for nonpayment, each and every one of the following ("Impositions"):

(a) All Leasehold Premises taxes or payments in lieu thereof imposed with respect to the Leasehold Premises or any portion thereof;

(b) Taxes imposed upon the leasehold estate created by this Lease, the rents payable or paid by Tenant to Landlord, or a tax in any form against Landlord measured by income derived from the leasing or rental of the Leasehold Premises, specifically including without limitation any leasehold excise taxes and any business and occupation tax imposed upon Landlord with respect to rentals, but excluding any taxes on net income or taxes in lieu thereof imposed on Landlord;

(c) All taxes imposed on or with respect to personal property and intangibles located in or used in connection with the Leasehold Premises other than such property owned by subtenants of the Leasehold Premises;

(d) All assessments for public improvements or benefits, including, but not limited to, all road improvement district and utility local improvement district taxes which are assessed during the Term of this Lease, and any similar assessments and charges;

(e) All other rents, rates and charges, excises, levies license fees, permit fees, inspection fees, refuse fees, and other fees and charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character (including interest and penalties thereon), which at any time during or in respect of the Term may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Leasehold Premises or any part thereof, or any estate, right or interest therein, or any occupancy, use or possession of or activity conducted on the leasehold Premises or any part thereof.

3.2.1 Installments. If by law any Imposition may at the option of the taxpayer be paid in installments, Tenant may exercise such option, and shall pay all such installments (and interest, if any) becoming due during the Term, as the same become due and before any additional interest or any penalty, fine or cost may be added thereto, and shall at the end of the Term deposit with Landlord an amount sufficient to pay Tenant's pro rata share of all Impositions for the Lease Year in which this Lease terminates.

3.2.2 Proof of Payment. Tenant will furnish to Landlord, upon request, for inspection, within thirty (30) days after the date any Imposition would become delinquent (unless being contested in conformity with Section 3.3), official receipts of the appropriate taxing authority or other proof satisfactory to Landlord evidencing the payment of such imposition.

3.3 Permitted Contests. Tenant, at its sole cost and expense, may, after prior written notice to Landlord, by appropriate legal proceedings conducted in good faith and with due diligence, contest the amount or validity or application, in whole or in part, of any Imposition or lien therefor, or any other lien, encumbrance or charge against the

Leasehold Premises arising from work done or materials provided to or for Tenant, if, and only if:

(a) Neither the Leasehold Premises nor any part thereof or interest therein is or will be in any danger of being sold, forfeited or lost;

(b) Such delay would not subject Landlord to criminal liability or fine; and

(c) Tenant shall have furnished such security, if any, as may be required in the proceedings or as may be reasonably requested by Landlord.

Tenant shall indemnify, protect, defend and hold harmless Landlord and the Leasehold Premises from any lien or liability with respect to any such Imposition or contest thereof, including all costs and expenses related thereto.

3.4 Reimbursement to Landlord for subdivision and survey costs. Upon entering into this Lease Tenant shall pay Landlord \$0 (zero dollars) for reimbursement to Landlord of its costs in having obtained a survey of the Leasehold Premises.

#### SECTION 4. TENANT FINANCING OF IMPROVEMENTS

4.1 Leasehold Mortgages. Tenant, and its successors and assigns, shall have the unrestricted right to mortgage (which term shall include a deed of trust) and pledge this Lease to an institutional lender without Landlord approval and to another lender with prior written approval of Landlord. In no event shall Landlord subordinate its fee simple interest in the Leasehold Premises which is the subject of this Lease.

#### SECTION 5. CONSTRUCTION OF IMPROVEMENTS

5.1 Acceptance of Premises. Tenant has inspected the Leasehold Premises and will accept the same on the Effective Date in its present "AS IS WHERE IS" condition.

5.2 Commencement of Construction. Tenant shall commence and proceed with construction and completion of the Improvements substantially in accordance with the construction plans and scheduled approved by Landlord under Section 5.3 hereof and otherwise in accordance with and subject to the terms of this Lease and subject to delays caused by Force Majeure as defined in Section 16.

5.3 Approval of Plans and Schedule. Tenant shall construct the Improvements described in the Preliminary Construction Schedule attached hereto as Exhibits B (the "Preliminary Construction Schedule"). Within sixty (60) days from the Effective Date, but in no event prior to construction of any alterations or improvements, Tenant shall provide Landlord with Preliminary Construction Drawings showing all improvements identified in the Preliminary Construction Schedule (the "Preliminary Construction Drawings"), which will be incorporated into this Lease once approved by Landlord. In the event Tenant fails

to comply substantially with the Construction Schedule set forth in Exhibit B, or to provide the Preliminary Construction Drawings within the time frame set forth herein, Tenant shall be in default and Landlord may terminate this Lease Agreement.

5.3.1 No material changes shall be made in the Preliminary Construction Plan or Construction Schedule without the prior written approval of Landlord. Any material changes shall be reviewed by Landlord within ten (10) working days.

5.3.2 Approvals by Landlord under this Section 5.3 shall not be unreasonably withheld or delayed. Provided, however, that the Landlord shall have the absolute and unfettered right to deny approval of (i) any changes to the Construction Schedule which when combined with previously approved changes, will result in a delay in the Construction Schedule of more than twelve (12) months; (ii) changes to the project which would result in Tenant's failure to construct the Improvements identified in the Preliminary Construction Plans.

5.4 Hold Harmless. Tenant shall indemnify, protect and hold harmless Landlord and the Leasehold Premises from and against all claims and liabilities arising by virtue of, or relating to, construction of the Improvements or repairs made at any time to the Leasehold Premises (including repairs, restoration and rebuilding).

5.5 Permits; Compliance with Codes. Tenant shall secure at its sole cost all building permits and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Improvements, or repairs, replacements or renewals to the Leasehold Premises as required by applicable laws, ordinances or regulations. Tenant shall cause all work on the Leasehold Premises during the Term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction.

5.6 Control and Indemnification. Landlord's approval of the Preliminary Construction Plans including any changes thereto, and Construction Schedule shall not render Landlord liable therefor, and Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims arising out of or from the use of such Preliminary Construction Plans. Nothing within this Section 5.6 shall be construed as a release or waiver of liability of any contractor with respect to any and all claims arising out of or from the use of such Preliminary Construction Plans.

5.7 Ownership of Improvements.

5.7.1 Tenant Ownership of Improvements. During the Term of this Lease, all improvements constructed by Tenant or its predecessor, including without limitation all buildings, additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, other than such property which is owned by subtenants of the Leasehold Premises, shall be the property

of Tenant. Upon the expiration or earlier termination of this Lease, Landlord may, at its option, become the owner of all buildings, structures, and Improvements located on the Leasehold Premises, without any obligation to pay therefor, or may require Tenant, at the sole cost and expense of Tenant, to remove, demolish or otherwise dispose of such buildings, structures and Improvements, and to restore and leave the Leasehold Premises in a clean, cleared and saleable condition. A demand to take at the normal expiration of the Lease Term, or any renewal term, shall be effected by a notice given at any time not less than ninety (90) days prior to the expiration date of the Lease. A demand to take effect on any other termination of the Lease shall be effective by a notice given (i) concurrently with any notice of termination or (ii) within forty-five (45) days after such termination. The obligations imposed by this section shall survive the expiration, cancellation or termination of this Lease.

5.7.2 Landlord Ownership of Fill and Subsurface Improvements. All subsurface improvements, including but not limited to fill, existing on or placed upon the Leasehold Premises shall belong to Landlord but shall be part of the Leasehold Premises leased to Tenant hereunder. Any fill added to, or placed upon, the Leasehold Property during the Term of this Lease shall become the property of Landlord upon installation and become a part of the Leasehold Premises. Nothing in this section 5.7.2 is intended to modify, limit or diminish Tenant's environmental obligations under Section 11 of this Lease.

## 5.8 Alterations and Additions.

5.8.1 Alterations and Additions. Tenant shall have the right at any time and from time to time during the Term, so long as no default exists hereunder, to make, at its expense, changes, renovations, alterations and additions to the Improvements or any part thereof; provided, however, that any such change, renovation, alteration or addition:

(a) shall not change the use of the Leasehold Premises or reduce the fair market value of the Improvements below their value immediately prior to such change, alteration or addition, or impair their usefulness;

(b) shall be effected with due diligence in good and workmanlike manner, and in compliance with all legal requirements and insurance requirements;

(c) shall be promptly and fully paid for by Tenant; and

(d) shall be made, if the estimated cost of such change, renovation, alteration or addition exceeds thirty percent (30%) of Tenant's current assessed value of improvements (exclusive of any changes made in connection with any subleases not involving any structural change), in accordance with plans and specifications and modifications thereto prepared by an architect or engineer selected by Tenant and satisfactory to Landlord, provided that such plans and specifications and modifications thereto and all cost estimates have been approved in writing by Landlord

and Tenant shall have furnished to Landlord such security as is satisfactory to Landlord to assure the completion of such change, renovation, alteration or addition. In the event that Landlord does not approve any such change, alteration or addition, it shall, within such fifteen (15) days of the receipt of plans and specifications or modifications thereto, so notify Tenant in writing, giving the reasons for such lack of approval. The parties shall then forthwith negotiate in good faith to resolve these difficulties. If a satisfactory resolution is not reached within an additional fifteen (15) days, the reasonableness of Landlord's disapproval shall be submitted to arbitration pursuant to Section 15 below. Each party shall bear the cost of such submittal incurred by it and the cost of the arbitrators shall be borne equally by the parties.

**5.8.2 Demolition and Reconstruction.** Tenant shall have the right at any time and from time to time during the Term, so long as no default exists hereunder, at its expense, to demolish part or all of the Improvements then existing if Tenant shall forthwith construct improvements upon the Land (the "Replacement Improvements") to replace such demolished Improvements, provided that (i) such Replacement Improvements shall be similar in type and quality to the facilities described in Exhibit B hereto, and (ii) in Landlord's judgment the Replacement Improvements will provide sufficient income to pay the Rent, provided that:

(a) prior to the commencement of any such demolition, Landlord shall have (i) received at least three (3) months' prior written notice from Tenant of the proposed demolition and construction, (ii) approved in writing the plans and specifications and modifications thereto for the proposed Replacement Improvements, prepared by an architect or engineer licensed in the State of Alaska selected by Tenant and satisfactory to Landlord, (iii) approved in writing the cost estimates for the proposed demolition and construction, and (iv) received a contractor's completion bond from Tenant as shall be satisfactory to Landlord to assure the lien-free completion of such proposed demolition and construction;

(b) any such demolition and the construction of Replacement Improvements in connection therewith shall comply with the provisions of subsections (b) and (c) of Section 5.8.1; and

(c) Evidence of compliance of such demolition and reconstruction with the provisions of this Lease, including without limitation, insurance and legal requirements.

Tenant shall not demolish any portion of the Improvements, other than strictly in accordance with the provisions of this Section 5.8.2, without the prior written consent of Landlord, except for minor demolitions in connection with alterations or additions as are performed in compliance with the provisions of Section 5.8.1.

**5.9 Surrender Upon Termination.** Upon expiration or earlier termination of this Lease, Tenant shall remove Tenant's personal property and equipment and shall

surrender the Leasehold Premises to Landlord; provided that Tenant shall not remove any appurtenant fixtures, machinery or equipment described in Section 1.6, or any additions to or replacements thereof made during the Term of this Lease, it being the intent of the parties that upon expiration or earlier termination of this Lease, Landlord shall have the option to acquire the facility Tenant (or its sublessee or predecessor) constructed thereon. Tenant's personal property and equipment not removed by Tenant at expiration or other termination or within a reasonable time thereafter, not to exceed forty-five (45) days, at sole cost and expense, or shall be considered abandoned and Landlord may take title to and use such property or at Landlord's sole discretion dispose of such property in any reasonable manner and Tenant shall reimburse Landlord for all costs and expenses of such disposal. The obligations imposed by this section shall survive the expiration or earlier termination of this Lease.

5.10 As-Built Drawings. Upon completion of the Improvements, Tenant shall deliver to Landlord two (2) copies each of as-built drawings for such Improvements and an as-built survey showing the location of the Improvements, including all underground Improvements and fill.

5.11 Discharge of Liens. Tenant will not directly or indirectly create or permit to be created or to remain, and will discharge any mortgage, lien, security interest, encumbrance or charge on, pledge of or conditional sale or other title retention agreement with respect to the Leasehold Premises or any part thereof, or with respect to Rent, or any other sums payable under this Lease, other than (a) this Lease; (b) liens for Impositions not yet payable, or payable without the addition of any fine, penalty interest or cost for nonpayment, or being contested as permitted by Section 3.3; (c) liens of mechanics, materialmen, suppliers or vendors, or rights thereto, incurred in the ordinary course of business for sums which under the terms of the related contracts are not at the time due, provided that adequate provision for the payment thereof shall have been made; (d) a leasehold mortgage permitted by Section 4.1; (e) a security interest in furniture, fixtures and equipment given as additional security for a leasehold mortgage permitted by Section 4.1; (f) any purchase money security interest in furniture, fixtures and equipment given to any vendor thereof; (g) any interest in furniture, fixtures and equipment given as security for the payment of money borrowed for the purchase price thereof; and (h) arising solely from the conduct of Lessor. Lessor shall have the right to post notices of non-responsibility in conspicuous places on the Leasehold Premises. Tenant shall give Lessor no less than twenty (20) days' prior notice in writing before commencing the work or the furnishing of materials for any change, renovation, alteration, addition or restoration so that Lessor may post notices of non-responsibility in conspicuous places on the Leasehold Premises.

## SECTION 6. DAMAGE OR DESTRUCTION

6.1 Repairs and Alterations. In the event of damage to or destruction of the Improvements:

6.1.1 Tenant's Obligation to Repair. If the same can be made under then existing laws, ordinances, statutes or regulations of any governmental authorities applicable thereto (or can be so made with minor and nonmaterial changes to the former condition and form of property damaged or destroyed), Tenant shall effect, and Landlord and Tenant agree that the funds derived from insurance acquired pursuant to Section 7 shall be made available to effect the repair and reconstruction of the Improvements so damaged or destroyed to substantially its condition prior to said damage or destruction. If insurance funds are not adequate, Landlord may require Tenant to escrow prior to the commencement of any construction work a sufficient sum so that taken together with the insurance funds available for construction purposes, is equal to or exceeds the cost of all labor, materials and other construction costs, direct and indirect, to fully complete the repairing, restoring and/or rebuilding of the improvement as aforesaid.

All such repair work shall be carried on in accordance with plans and specifications prepared by a licensed architect or engineer approved by Landlord (acting reasonably) if such an architect or engineer is reasonably required, given the scope and nature of the work. No extras or changes in plans and specifications shall be made by Tenant without first (A) giving written notice of such changes to Landlord and obtaining Landlord's approval thereof (which approval shall not be unreasonably withheld or delayed), and (B) depositing into escrow additional funds sufficient to pay for such extras or changes, and (C) as to any such changes which, together with all other changes theretofore made, involve over thirty percent (30%) of current assessed value of Tenant's improvements and as to any changes which involve fundamental or material changes in the uses permitted by this Lease, obtaining the written consent of Landlord (which consent shall not be unreasonably withheld).

6.1.2 Tenant's Election to Repair. If funds in excess of thirty percent (30%) of the available insurance funds would be required to effect the repairs or reconstruction described in Section 6.1.1 or if such reconstruction or rebuilding cannot be made under then existing laws, ordinances, statutes or regulations of any governmental authority applicable thereto (and cannot be so made with changes to the former condition and form of the Improvements damaged or destroyed such that the repaired or reconstructed Improvements have substantially the same economic value as the Improvements had immediately prior to the damage or destruction), and, in either such event the parties hereto are unable during a period of sixty (60) days after the determination of the insurance surveyor with respect to such damage or destruction to agree in writing on a construction program, then the Term shall end as of the date of such damage or destruction and the insurance proceeds collected as a result of such damage or destruction shall be distributed as provided in Section 7.6(ii); provided, however, if such reconstruction or rebuilding can be made under such existing laws, ordinances, statutes and regulations (or can be so made with changes to the former condition and form of the Improvements damaged or destroyed such that the repaired or reconstructed Improvements have substantially the same economic value as the Improvements had immediately prior to the damage or destruction), but the cost of so repairing or reconstructing such damage or destruction (after deducting available insurance

proceeds) is in excess of thirty percent (30%) of the available insurance funds would be required to effect the repair and restoration as provided in Section 6.1.1, and the Term shall not end as of the date of such damage or destruction, if Tenant (i) gives notice to that effect to Landlord within sixty (60) days after the determination of the insurance surveyor with respect to said damage or destruction; and (ii) promptly demonstrates to the reasonable satisfaction of Landlord that it can deposit into escrow the funds required or that will be required under the provisions of Section 6.1.1, whereupon the provisions of said Section 6.1.1 shall be fully applicable to such damage or destruction.

6.2 Prompt Repair. If Tenant, pursuant to the terms hereof, is obligated or elects to repair, replace, reconstruct or rebuild any structures, improvements or other property as hereinabove provided, the same shall be effected at Tenant's cost and expense (which may be paid from insurance proceeds available as above provided and subject to the provisions of Section 6.1.1), and Tenant shall diligently commence and continuously carry out such repair, replacement, reconstruction or rebuilding, to full completion as soon as possible, except to the extent of delays due to strikes, lockouts, shortages of labor or materials after due diligence in obtaining the same, governmental restrictions, fire, casualty, riot, act of God, act of the public enemy, or other causes beyond the reasonable control of Tenant after the exercise of due diligence, including diligence in contracting, and the repairing, restoring, replacing or rebuilding the same exceed fifty percent (50%) of the current assessed value of Tenant's improvements immediately prior to damage or destruction, then Tenant may elect to terminate the Term and, in such event, Tenant shall give notice to Landlord of its election within sixty (60) days after the determination by the insurance surveyor of the amount of damage, the Term shall thereupon terminate as of the date of such notice and Landlord shall be entitled to receive the full amount of any insurance proceeds collected as a result of such damage or destruction.

## SECTION 7. INSURANCE

7.1 Acquisition of Insurance Policies. Tenant shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, during the Term, the insurance described in this Section (or its then available equivalent), which insurance shall be subject to Landlord's review and approval, which approval shall not be unreasonably withheld, and shall name Landlord as additional insureds. Policy limits may be reviewed annually by Landlord and may be adjusted if prudent, considering levels of inflation, risk of loss, premium expenses, and other relevant factors. Any dispute regarding policy limits shall be resolved by Arbitration as provided in Section 15 hereof;

7.2 Types of Required Insurance. Tenant shall procure and maintain the following:

7.2.1 Comprehensive General Liability Insurance. Comprehensive general liability insurance covering all claims with respect to injuries or damages to persons or

property sustained in, on or about the Leasehold Premises and the appurtenances thereto, including sidewalks and alleyways adjacent thereto if any, with limits of liability (which limits shall be adjusted as provided in Section 7.1 above) no less than the following:

Bodily and Personal Injury and Property Damage Liability  
Five Hundred Thousand Dollars (\$500,000)  
each occurrence and aggregate.

**7.2.2 Physical Property Damage Insurance.** All risk physical damage insurance covering all real and personal property, excluding property paid for by subtenants or paid for by Tenant for which subtenants have reimbursed Tenant, located on or in, or constituting a part of, the Leasehold Premises, in an amount equal to at least one hundred percent (100%) of replacement value of all such property (or such lesser amount as Landlord may approve in writing). Such insurance shall afford coverage for damages resulting from (a) fire; (b) perils normally covered by extended coverage insurance used in the state of Alaska; (c) earthquake and flood; (d) explosion of steam and pressure boilers and mechanical and electrical apparatus located in the Leasehold Premises; and (e) loss of rents and/or business interruption. Tenant shall not be required to maintain insurance for war risks; provided, however, if Tenant shall obtain any such coverages, then, for as long as such insurance is maintained by Tenant, Landlord shall be entitled to the benefits of (i) the first sentence of Section 7.3 hereof, and (ii) subparagraph (c) of such Section 7.3.

**7.2.3 Builder's Risk Insurance.** During construction of the Improvements and during any subsequent restorations, alterations or changes in the Leasehold Premises that may be made by Tenant at a cost in excess of Twenty-five Thousand Dollars (\$25,000) per job, contingent liability and all builder's risk insurance in an amount reasonably satisfactory to Landlord. During construction of the Improvements, the all builder's risk insurance shall include insurance for earthquake risks.

**7.2.4 Workers Compensation Insurance.** Workers compensation and employer's liability insurance in respect of any work by employees of Tenant on or about the Leasehold Premises.

**7.3 Terms of Insurance.** The policies required under Section 7.2 shall name Landlord as additional insureds and Tenant shall provide to Landlord certificates of insurance and copies of policies obtained by Tenant hereunder promptly upon the request of Landlord. Further, all policies of insurance described in Section 7.2 shall:

- (a) Be written as primary plus umbrella policies not contributing with and not in excess of coverage that Landlord may carry;
- (b) Contain a replacement cost endorsement without deduction for depreciation;

(c) Contain an endorsement providing that such insurance may not be materially changed, amended or canceled with respect to Landlord except after thirty (30) days' prior written notice from insurance company to Landlord; and

(d) Contain an endorsement including an express waiver of any right of subrogation by the insurance company against Landlord and Landlord's officers, agents and employees to the extent such waiver is obtainable.

7.4 Landlord's Acquisition of Insurance. If Tenant at any time during the Term fails to procure or maintain such insurance or to pay the premiums therefore, Landlord shall have the right to procure the same and to pay any and all premiums thereon, and Tenant shall pay to Landlord upon demand the full amount so paid and expended by Landlord, together with interest thereon at the rate provided in Section 16.14 hereof from the date of such expenditure by Landlord until repayment thereof by Tenant.

7.5 Insurance Money and other Funds Held in Trust. All insurance money or condemnation proceeds as provided in Section 8, shall be held in trust and shall be applied as follows: First, for the purpose of defraying the cost of repairing, restoring, replacing and/or rebuilding any structure or improvement on or in the Leasehold Premises as hereinafter provided; and second, if the damaged or destroyed structure or improvement is not repaired, restored, replaced or rebuilt as hereinafter provided said funds shall, except as provided in Section 6.4, be disposed of as provided in Section 7.6(ii).

7.6 Application of Proceeds of Physical Damage Insurance.

(a) In the event of any repair, replacement, restoration or rebuilding pursuant to Section 6.1.1 or 6.1.2, the proceeds of the insurance shall be applied to the cost of such work upon certificate of progress by the licensed architect or engineer in charge of the work. Any amounts payable to Tenant or any affiliate of Tenant for work or services performed or materials provided as part of any such repair, replacement, restoration or rebuilding shall not exceed competitive rates for such services or materials and Tenant shall, upon request of Landlord, make available to Landlord all books and records of Tenant relating to such work, services and materials. Upon completion of such repair, replacement, restoration or rebuilding in accordance with the provisions of this Lease, and the full payment therefor (so no liens, encumbrances or claims with respect thereto can be asserted against the Leasehold Premises, this Lease, Landlord or Tenant), any insurance proceeds received with respect to the damage or destruction involved, and not used, shall be paid to Tenant.

(b) In the event any damaged or destroyed structure or improvement is not restored, repaired or replaced, the proceeds of any insurance collected with respect to such damage or destruction shall, except as provided in Section 6.4, be applied: First, to the payment of any mortgage constituting a lien on the Leasehold Premises; second, Landlord shall be paid an amount sufficient to restore the Leasehold

Premises to its condition as of the Effective Date; and third, the balance of such proceeds shall be paid to Tenant.

7.7 Insurance Surveyor. The determinations required under Section 6 and this Section 7 shall be made by an independent qualified insurance appraiser selected by the parties, whose decision shall not be subject to arbitration. If the parties cannot agree on the insurance appraiser within thirty (30) days after the date of such damage or destruction, then the same shall be decided by arbitration pursuant to Section 15.

## SECTION 8. CONDEMNATION

8.1 Total Taking. In the event of the taking or condemnation by any competent authority for any public or quasi-public use or purpose of the whole of the Leasehold Premises at any time during the Term, the Term shall cease as of the Date of Taking by the condemner and all rental and other payments shall be apportioned as of the Date of Taking and the right of Landlord and Tenant to share in the proceeds of any award for the Leasehold Premises, Improvements and damages upon any such taking, shall be as follows:

8.1.1 Landlord's Share. The Landlord shall first receive a sum equal to the fair market value, as of the day prior to commencement of the condemnation proceedings, of the Leasehold Premises taken, considered as unimproved, unencumbered land (except for Tenant's interest under this Lease), as then restricted by applicable zoning laws, together with interest thereon from the Date of Taking to the date of payment at the rate paid on the award, and together with amounts owing Landlord from Tenant under this Lease as rental, damages for Tenant's breach or otherwise.

8.1.2 Tenant's Share. Except as otherwise provided for within this Section 8.1.2, Tenant shall be entitled to the entire balance of the award ("Award Balance"). If the Taking as above set forth shall occur at any time during the last ten (10) years of the initial Term or extended Term, Tenant shall be entitled to receive out of the award, with interest thereon, the Award Balance diminished by ten percent (10%) of such Award Balance for each full year (and in proportion for a fraction of a year) that has elapsed from the first day of said ten-year (10-) period to the Date of Taking; the remaining Award Balance and interest thereon, as well as the award for the Leasehold Premises pursuant to Section 8.1.1 and interest thereon, shall belong to the Landlord.

8.1.3 Determination of Tenant and Landlord Shares. If the values of the respective interests of Landlord and Tenant shall be determined according to the provisions of Sections 8.1.1 and 8.1.2 in the proceeding pursuant to which the Leasehold Premises shall have been taken or condemned, the values so determined shall be conclusive upon Landlord and Tenant. If such values shall not have been thus separately determined, such values shall be fixed by agreement between the Landlord and Tenant or if they are unable to agree within thirty (30) days following the date of the award, then the controversy shall be resolved by Arbitration under Section 15.

8.2 Substantial Taking. In the event of the taking in condemnation of less than the whole of the Leasehold Premises but materially all of the Leasehold Premises (which, as used herein is defined in Section 8.2.1 below), and the part of the Leasehold Premises that remains includes a part of the Improvements, then the Lease Term shall cease as of the date of possession by the condemner as provided in Section 8.1.1 and as to the untaken portion of the Improvements, the parties shall endeavor to agree on the fair market value of such portion of the Improvements as of the day prior to commencement of the condemnation proceeding, and if they fail to agree within ninety (90) days after either party requests negotiations to reach agreement, then the controversy shall be resolved by Arbitration as provided in Section 15. The value so agreed or determined in Arbitration as the fair market value of the untaken Improvements shall be paid by Landlord to Tenant and until paid shall be a charge on the share of the award to which Landlord shall be entitled in the condemnation proceeding but shall be payable only out of the proceeds of such award for land value and Landlord shall have no further liability therefore.

8.2.1 Determination of Substantial Taking. For the purposes of this Section, a taking or condemnation of materially all of the Leasehold Premises, as distinguished from a taking or condemnation of the whole of said Leasehold Premises, means a taking of such scope that the remaining part of the Leasehold Premises not taken cannot be adequately restored, repaired or reconstructed so as to constitute a complete functional unit of property of substantially the same usefulness, design and construction, having regard to the taking, as immediately before such taking, capable of producing, after the payment of all operating expenses thereof, the annual Rent and other charges herein reserved, the debt service charges on any then-existing mortgages held by a permitted mortgagee (but not including a purchase money leasehold mortgage given on the sale of the Tenant's leasehold interest hereunder), and after the performance of all covenants, terms, agreements and provisions herein and by law provided to be performed and paid by the Tenant, a fair and reasonable net annual income, defined as ninety percent (90%) of the average net annual income produced by the Leasehold Premises during the three (3) year period immediately preceding such taking.

8.3 Partial Taking. In the event of a partial taking or condemnation, e.g., a taking or condemnation of less than materially all of the Leasehold Premises:

(a) The Term of this Lease (except as hereinafter provided) shall, nevertheless continue, but the annual Rent to be paid by Tenant under Section 2 shall thereafter be reduced in the ratio that the rental value of the portion of the Leasehold Premises taken or condemned bears to the rental value of the entire Leasehold Premises at the time of the taking or condemnation. If the parties cannot agree upon a just proportion of rent to be abated, the amount shall be determined in accordance with the Arbitration provisions of Section 15;

(b) The award shall be divided and shared by Landlord and Tenant as provided in Sections 8.1.1 and 8.1.2 hereof:

(c) The Tenant shall have the right, to be exercised by written notice to the Landlord within sixty (60) days after the date of taking, to terminate this Lease as to such remaining part of the Leasehold Premises not so taken on a date to be specified in said notice not earlier than the date of such taking. In such case the Tenant shall pay and satisfy all Rent due and accrued hereunder up to such date of such termination and shall perform all of the obligations of the Tenant hereunder to such date and thereupon this Lease shall terminate. Should the parties be unable to agree as to whether the part not taken is susceptible of adequate restoration, repair or reconstruction as aforesaid, such controversy shall be determined by Arbitration in the manner provided in Section 15 of this Lease;

(d) If this Lease is not terminated as hereinabove provided, and if such taking occurs prior to the last fifteen (15) years of the Lease Term, then, as to the Leasehold Premises not taken in such condemnation proceeding, the Tenant shall proceed diligently, to the extent the portion of the condemnation award paid to Tenant is sufficient for such purpose, to make an adequate restoration, repair or reconstruction of the part of the Improvements not taken so as to restore, repair or reconstruct the Leasehold Premises, to the extent practicable, to a condition having the per square foot income generating capability of the Leasehold Premises prior to such taking.

8.4 Successive Takings. In case of a second or any other additional partial taking or takings from time to time, the provisions hereinabove contained shall apply to each partial taking.

8.5 Temporary Taking. If the whole or any part of the Leasehold Premises or of the Tenant's interest under this Lease be taken or condemned by any competent authority for its temporary use or occupancy, Tenant shall continue to pay, in the manner and at the times herein specified, the full amounts of the Rent and charges payable by Tenant hereunder; and this Lease shall continue and, except only to the extent that Tenant may be prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Tenant to be performed and observed, as though such taking or condemnation had not occurred. In the event of any such temporary taking or condemnation, Tenant shall be entitled to receive the entire amount of any award made for such taking, whether paid by way of damages, rent or otherwise, unless such period of temporary use or occupancy shall extend to or beyond the expiration date of the Term of this Lease, in which case such award shall be apportioned between the Landlord and the Tenant as of such date of expiration of the Term.

## SECTION 9. INSPECTION BY LANDLORD

9.1 Inspection of Premises. Landlord and Landlord's agent and representative shall be entitled, from time to time, upon reasonable notice to Tenant, to go upon and into the Leasehold Premises during normal business hours for the purpose of (a) inspecting

the same, or (b) inspecting the performance by Tenant of the agreements and conditions of this Lease.

During the last thirty-six (36) months of the Term of this Lease, Tenant shall permit inspection of the Leasehold Premises at reasonable times and for reasonable periods by or on behalf of prospective tenants and prospective purchasers.

9.2 Rights of Subtenants. Notwithstanding the provisions of Section 9.1, the rights of Landlord to enter into any portion of the Leasehold Premises which are subject to a sublease from Tenant to any subtenant, shall be subject to reasonable restrictions contained in such sublease which are applicable to Tenant and any provisions of applicable law.

## SECTION 10. INDEMNIFICATION

10.1 Tenant to Indemnify Landlord. Notwithstanding that joint or concurrent liability may be imposed upon Landlord by statute, ordinance, rule, regulation or order, Tenant shall upon demand indemnify, defend, hold harmless and reimburse Landlord from and against and for any and all liabilities, obligations, penalties, fines, suits, claims, demands, actions, costs and expenses of any kind or nature including without limitation reasonable architects', engineers', and attorneys' fees which may be imposed upon or asserted against Landlord by reason of any damage to any property or the Improvements on the Leasehold Premises, or injury to any person or persons occurring on or about the Leasehold Premises.

10.2 Legal Proceedings. If Tenant is required to defend any action or proceeding pursuant to this Section to which action or proceeding Landlord is made a party, Landlord shall also be entitled to appear, defend, or otherwise take part in the matter involved, at its election, by counsel of its own choosing, and to the extent Landlord is indemnified under this Section 10, Tenant shall bear the reasonable costs of Landlord's defense, including attorneys' fees.

## SECTION 11. ENVIRONMENTAL PROVISIONS

### 11.1 General Obligations.

(a) Tenant shall comply with all environmental laws, orders and regulations of federal, state, and local authorities, and with any directive issued pursuant to law by any public officer thereof, which shall impose any order or duty upon Tenant pertaining to the construction, use or occupancy of the Leasehold Premises or any Improvements thereon by Tenant or any of its sublessees.

(b) Tenant shall have the right to contest any obligations imposed upon Tenant pursuant to the provisions of this Section, and do defer compliance during the pendency of the contesting proceedings, provided that the failure of Tenant to comply will not subject Landlord to civil fine or criminal penalty.

(c) Notwithstanding the foregoing, in the event that Tenant's failure to promptly fulfill the contested obligations would pose an imminent threat to public health, public safety and/or the environment, Tenant shall immediately perform whatever actions may be required to abate the immediate threat. Thereafter, Tenant may contest the obligations and defer further compliance, as set forth above.

(d) Tenant shall provide Landlord with copies, of all documents served upon Tenant or its counsel by, and served by Tenant or its counsel upon, the governmental authority.

(e) Failure of Tenant to comply with the provisions of this Section shall be an act of default under the terms of this Lease and shall entitle Landlord to pursue all applicable remedies. In addition, Landlord shall be entitled to collect from Tenant any fines, penalties, expenses of defense (including legal fees), expenses of compliance and other damages incurred by Landlord by reason of Tenant's default under this section.

11.2 Procedure to Follow upon Discovery of Potential Contamination. In the event that Tenant discovers any condition during the course of excavation or construction that would indicate the possible existence of hazardous substances on the Leasehold Premises (hereafter referred to as "contamination"), Tenant shall immediately suspend the work and notify Landlord. If Tenant knows or has reasonable cause to believe that the contamination occurred during the lease Term, then Tenant shall investigate the matter at its sole cost and expense and the responsibility for such contamination shall be governed by Section 11.4 below. If, however, the time of occurrence of the contamination is unknown, the Landlord shall investigate the matter at Landlord's initial cost and expense. If the substances are indeed hazardous, as defined under any statute or regulations of any governmental authority (including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., or AS 46.04.010, 46.08.010, or 46.09.010), then the following shall apply:

(a) The obligation to pay rent as to those lands shall be suspended from the date of discovery by Tenant of the evidence of hazardous substances to the extent specified in subsection (b)(2) below.

(b) If the parties agree or Tenant proves by a preponderance of the evidence either that the contamination occurred prior to the effective date of this Lease, or that the contamination occurred during the Lease Term and is attributable to the negligence or willful act of Landlord or its employees or agents, then:

1) Landlord shall bear full responsibility for any actions required by law in the same manner as if the existence of the contamination were known prior to execution of this Lease and as provided in subsection 11.3 below.

2) Either party shall be entitled to terminate this Lease as to those lands which are contaminated by giving written notice of its election to do so within sixty (60) days after receipt of notice that such substances are hazardous or the date of determination that the contamination predated Tenant's occupancy or resulted from actions attributable to Landlord, whichever last occurs. The decision to terminate shall be exercised consistent with the covenant of good faith and fair dealing. If neither party elects to terminate, Landlord shall take whatever actions are required by law to remediate, remove or otherwise clean up the premises when and as required under Section 11.3 below. The obligation to pay rent as to those lands shall be suspended from the date of discovery of the evidence of hazardous substances until remediation is complete, but only if and to the extent the Leasehold Premises are not usable and Tenant is not receiving rents from any subtenants with respect to such contaminated land.

(c) If none of the conditions stated in subparagraph 11.2(b) above apply, then Section 11.4 shall govern responsibility for remediating the contamination and Tenant shall reimburse Landlord for the cost of the initial investigation.

**11.3 Tenant's Indemnity for Contemporaneous Contamination.** Tenant agrees to indemnify, hold harmless and defend Landlord against all liability, cost and expense (referred to hereafter as "costs" and including, without limitation, any fines, penalties, diminution in value of the Leasehold Premises, assessment and clean-up costs, judgments, litigation costs and attorneys' fees) incurred by or levied against Landlord to the extent such costs arise as a result of Tenant's breach of Section 11.1 of this Lease or as a result of any discharge, leakage, spillage, emission or pollution on or from the Leasehold Premises, without regard to whether such costs arise as a result of acts or omissions that occur on the Leasehold Premises during the Term of this Lease, including any extended term hereof, or thereafter; provided, however, that Tenant shall not be required to indemnify Landlord under this paragraph if or to the extent (1) the parties agree or a court of competent jurisdiction determines that such liability, cost or expense is caused by the willful misconduct or negligence of Landlord, or (2) if Tenant proves that the contamination occurred before occupancy by the City of the Leasehold Premises or any relevant portion thereof under this Lease or any other preexisting agreement between the parties. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

## SECTION 12. SUBLETTING AND ASSIGNMENT

**12.1 Subletting.** Tenant shall have the right to, directly or indirectly, sublease or sublet all or any part of the Leasehold Premises for any time or times during the Term not to exceed the Term of this Lease, provided such subletting is consistent with the purposes of, and uses permitted by this Lease.

**12.2 Covenant Against Assignments.** Except as permitted by Section 4.3 hereof, Tenant shall not, without the prior consent of Landlord, which consent shall not be unreasonably withheld, sell, assign, transfer, dispose of, mortgage, pledge or grant a

security interest in this Lease, the leasehold estate it creates, or any of Tenant's rights hereunder, in whole or in part, nor shall Tenant's rights or interests under or in this Lease pass or be transferred or assigned by operation of law or otherwise.

12.3 Covenants Binding on Successors and Assigns. All of the terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto. If there occurs any assignment permitted hereunder, or made with the consent of Landlord, Tenant shall cause to be delivered to Landlord concurrently with or prior to such assignment, an instrument in writing signed and duly acknowledged by the assignee or successor by which such assignee or successor agrees to perform all of the terms and provisions of this Lease applicable to Tenant.

12.4 Rights of Mortgagee. Notwithstanding the foregoing provisions of this Section 12, Tenant shall have the right to mortgage or grant a deed of trust on the Leasehold Premises to a mortgagee, all subject to and as provided in Section 4 of this Lease.

### SECTION 13. LANDLORD AND TENANT TO FURNISH STATEMENT

13.1 Landlord's Statement. Landlord within twenty (20) days after written request to Landlord from Tenant or any mortgagee or prospective mortgagee, will furnish a written statement, duly acknowledged, which shall specify to the best of Landlord's knowledge

- (a) The amount of the Rent due, if any;
- (b) Whether or not this Lease is unmodified and in full force and effect (or, if there have been modifications, whether or not the same are in full force and effect as modified and identifying the modifications);
- (c) Whether or not Tenant is in default and specifying the nature of any such default; and
- (d) Such other matters as Tenant or the mortgagee may reasonably request and which relate to the actual knowledge of Landlord.

13.2 Tenants Statement. Tenant, within twenty (20) days after written request of the Landlord, will furnish a written statement, duly acknowledged, as to:

- (a) Whether this Lease is unmodified and in full force and effect (or, if there have been modifications, whether or not the same are in full force and effect as modified and identifying the modifications);
- (b) Whether there are any defaults thereunder on the part of Landlord to the knowledge of Tenant and specifying the nature of such defaults, if any; and

(c) Such other matters as Landlord may reasonably request and which relate to the actual knowledge of Tenant.

## SECTION 14. DEFAULT

14.1 Event of Default. The occurrence of any of the following shall constitute an Event of Default:

14.1.1 Payments to Landlord. Failure of Tenant to duly and punctually make any payment owing to Landlord hereunder, or to pay any imposition (except when non-payment or delay is expressly permitted by Section 3) or any other payment which if not paid may result in a lien on the Leasehold Premises as and when the same becomes due and payable, or the failure to maintain any of the insurance coverage required hereunder or pay any of the premiums required to be paid with respect thereto, and such occurrence or failure continues for a period of fifteen (15) days after notice thereof given to Tenant by Landlord.

14.1.2 Construction of Improvements and Construction Schedule. Tenant's failure to commence construction of the Improvements in the manner described in the Preliminary Construction Plans on or before the "Start Date" as defined in the Construction Schedule. Or, after commencing construction, Tenant fails to continue and maintain its construction obligations in accordance with Tenant's Construction Schedule and such failure continues for a period of more than 180 days after Landlord has given Tenant notice that it is not in compliance with the Construction Schedule and/or the Preliminary Construction Plans.

14.1.3 Other Covenants. Tenant being in breach of, or Tenant failing to perform, comply with, or observe any other term, covenant, warranty, condition, agreement or undertaking contained in or arising under this Lease of the Ground Lease and such failure continues for a period of thirty (30) days after notice thereof is given to Tenant.

14.2 Termination of Lease. In addition to all other rights and remedies available to Landlord by law or equity, Landlord may, at any time after the occurrence of any Event of Default, and while the same remains unremedied, give notice to Tenant of its intention to terminate this Lease, in which case, subject to the provisions of Section 4.2, unless within fifteen (15) days after the giving of such notice, the condition creating or upon which it is based such an Event of Default is cured, this Lease shall terminate as of the expiration of such fifteen (15) days and Landlord may reenter upon the Leasehold Premises and have possession thereof; provided, however, if the Event of Default is one described in Section 14.1.3 and is one which can be cured, but cannot with due diligence (without regard to the availability of funds or the financial condition of Tenant) be cured prior to the expiration of the period provided herein, and Tenant proceeds promptly and thereafter prosecutes with all due diligence the curing of such default, then the time for curing of such Event of Default shall be extended for such period as may be necessary to complete

the same with all due diligence. Notwithstanding the foregoing provisions of this Section 14.2 or the provisions of Section 14.1.3 hereof, if the asserted default is subject to arbitration pursuant hereto, and the existence of such default is being contested by the party assertedly in default if and so long as such party is cooperating and acting in good faith to complete the arbitration proceeding with respect thereto as expeditiously as possible, the time for curing such default shall commence upon the rendering of the arbitration decision with respect thereto, or other resolution thereof, whichever occurs first; provided, however, if the matter being arbitrated is capable of performance to the extent not reasonably in dispute (e.g., the undisputed portion of monies owing), performance to the extent not in dispute shall be a condition precedent to the effectiveness of this sentence.

**14.3 Effect of Termination.** Subject to the provisions of Section 4 (relating to the rights of mortgagees) upon termination of this Lease by expiration of the Term or pursuant to this Section 14, all rights and privileges of Tenant and all duties and obligations of Landlord hereunder shall terminate. Immediately upon such termination, and without further notice to any other party, Landlord shall have the right to assert, perfect, establish and confirm all rights reverting to Landlord by reason of such termination by any means permitted by law, including the right to take possession of the Leasehold Premises together with all Improvements thereto, fixtures therein (including trade fixtures) and any and all alterations and Improvements which may be constructed upon or to the Leasehold Premises, with or without process of law, and to remove all personal property from the Leasehold Premises and all persons occupying the same and to use all necessary lawful force therefor and in all respects to take the actual, full and exclusive possession of the Leasehold Premises and every part thereof as Landlord's original estate, thereby wholly terminating any right, title, interest or claim of or through Tenant as to the Leasehold Premises and the improvements, fixtures and alterations thereto, and all personal property located on the Leasehold Premises, all without incurring any liability to Tenant or to any person occupying or using the Leasehold Premises for any damage caused or sustained by reason of such entry or such removal, except for damage resulting from Landlord's negligence in effecting such removal, and Tenant agrees to indemnify, protect and save harmless Landlord, and all employees, agents and representatives of Landlord, from all costs, loss or damage arising or occasioned thereby to Tenant, or its agents, employees, officers, guests, invitees or tenants, except as limited hereinabove.

**14.4 Damages and Remedies.** The exercise by Landlord of any remedy arising by virtue of an Event of Default shall not be considered exclusive, and Landlord may exercise any and all other rights or remedies provided by this Lease or by law or equity. The termination of this Lease by expiration of the Term or pursuant to this Section 14 shall not extinguish the right of either party to collect damages arising from the breach of this Lease by the other party. Tenant shall be liable for rentals accruing up to the end of the Term specified in this Lease notwithstanding the earlier termination of this Lease due to an Event of Default and the reentry of Landlord before the normal expiration of the Term as established herein or pursuant hereto, except that Landlord shall make reasonable and diligent efforts to rerent the Leasehold Premises upon such terms as it sees fit in its

reasonable discretion and for a term which may expire either before or after the specified termination date of the Term herein, and Tenant shall pay to Landlord all rent and other sums which would be payable hereunder by Tenant if no such termination and reentry had occurred, less the net proceeds, if any, of any such reletting after deducting Landlord's expenses in connection with such reletting, including but not limited to repossession costs, brokerage commissions, legal expenses, employee costs and expenses, alteration costs and other such reletting preparation expenses, and Tenant shall pay such current damages to Landlord on the days on which such rental would have been payable hereunder if no such termination and repossession and reentry had occurred.

14.5 Assignment of Subrents. Tenant assigns to Landlord all subrents and other sums falling due from subtenants, licensees and concessionaires (referred to as "Subtenants" in this paragraph 14.5) during any period in which Landlord has the right under this Lease, whether exercised or not, to reenter the Leasehold Premises for Tenant's default, and Tenant shall not have any right to such sums during that period. Landlord may at Landlord's election reenter the Leasehold Premises and Improvements with or without process of law, without terminating this Lease, and either, or both, collect these sums or bring action for the recovery of the sums directly from Subtenants. Landlord shall apply all such collected subrents as provided in Section 14.6. Tenant shall nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all sums required of Tenant under this Lease, plus Landlord's expenses, less the avails of the sums assigned and actually collected under this Section 14.5. Landlord may proceed to collect either the assigned sums or Tenant's balances, or both, or any installment or installments of them, either before or after expiration of the Lease Term, but the period of limitations shall not begin to run on Tenant's payment until the due date of the final installment to which Landlord is entitled under this Lease, nor shall it begin to run on the payments of the sums assigned under this Section 14.5 until the due date of the final installment due from the respective Subtenants.

14.6 Application of Sums Collected by Landlord. Landlord shall apply all subrents and proceeds of reletting as follows: first, to the payment of reasonable expenses (including attorneys' fees and brokers' commissions or both) paid or incurred by or on behalf of Landlord in recovering possession, placing the Leasehold Premises and Improvements in good condition, and preparing or altering the Leasehold Premises or Improvements for reletting; second, to the reasonable expense of securing new lessees; third, to the fulfillment of Tenant's covenants to the end of the Lease Term; and fourth, to Tenant's uses and purposes.

14.7 Reasonable Rental Value Determination. Landlord may at any time after a termination of this Lease pursuant to this Section 13, recover from Tenant the worth at such time (discounted to value at the time of termination) of the excess, if any, of the amount of the rent reserved in this Lease for the balance of the Term (had such termination not occurred) over the then reasonable rental value of the Leasehold Premises for the same period, such "reasonable rental value" being the amount of rental

which Landlord can reasonably be expected to obtain as rent for the remaining balance of the Term (to its normal expiration date had such termination not occurred). Upon rerenting of the Leasehold Premises by Landlord, Tenant shall be liable to Landlord for the costs and expenses of rerenting and of such alterations and repairs as may be reasonably incurred by Landlord in readying the Leasehold Premises for such rerenting.

14.8 No Waivers. No failure by any party hereto to insist upon the strict performance of any provision of this Lease or to exercise any right, power or remedy consequent to any breach thereof, and no waiver of any such breach, or the acceptance of full or partial rent during the continuance thereof, shall constitute a waiver of any such breach or of any such provision. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the rights of any party hereto with respect to any other then existing or subsequent breach.

14.9 No Offsets. Tenant shall not assert any breach of an obligation, warranty or duty of Landlord as, and no such breach shall constitute, a defense, offset, excuse or counterclaim to any obligation of Tenant hereunder, but Tenant may, subject to the other provisions of this Lease, pursue independent remedies for any such breach by Landlord.

14.10 Payment by Landlord of Tenant's Defaulted Payments. In case of default on the part of Tenant to pay any money, or do any act to satisfy any of the obligations or covenants which it is required to pay, do, or satisfy under the provisions of this Lease, Landlord may, at its option, after notice to Tenant, pay any or all such sums, or do any or all such acts which require the payment of money, or incur any expense whatsoever to remedy the failure of Tenant to perform any one or more of the covenants herein contained. Tenant shall repay the same to Landlord on demand together with interest at the rate provided in Section 18.14 hereof, such interest to be calculated from the date payment is made by Landlord.

## SECTION 15. ARBITRATION

15.1 Arbitration. The disputes described in Sections 5.8.1; 7.1; 7.7; 8.1.3; 8.2; 8.3; 14.2 and 18.3, and no other, shall be subject to arbitration. Such arbitration ("Arbitration") shall be in accordance with the Arbitration Rules for the Real Estate Industry promulgated by the American Arbitration Association as then in effect, each party to appoint one arbitrator and those two arbitrators to appoint a third arbitrator. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof, subject, however, to the provisions of AS 09.43.010 et seq. (the "Alaska Uniform Arbitration Act") which are not in conflict with said Rules; provided, however, if such Association is not then functioning or such Rules are not then in effect, Arbitration shall be conducted in accordance with the requirements of the Alaska Uniform Arbitration Act, or such other provisions of the statutory laws of the State of Washington as may be enacted in lieu of the Alaska Uniform Arbitration Act, one arbitrator to be appointed by each of the parties hereto, and those two arbitrators to promptly appoint a third arbitrator. All such arbitration proceedings shall take place in Anchorage, Alaska. In any such

arbitration proceeding, each party shall have full access to the books and records of the other party and the power to call for testimony any employee, agent or officer of any other party and all other rights to discovery afforded under the then applicable Alaska Rules of Civil Procedure or rules or laws applicable to Alaska Superior Court proceedings adopted in lieu thereof, shall be applicable, all of which shall be fully enforceable by the arbitrators or, if they fail to effect such enforcement, by the Superior Court of the State of Alaska at Anchorage, Alaska.

## SECTION 16. FORCE MAJEURE.

16.1 Force Majeure. If the performance by either of the parties of their respective obligations under this Lease (excluding monetary obligations) is delayed or prevented in whole or in part by any acts of God, fire or other casualty, floods, storms, explosions, accidents, epidemics (not including the novel coronavirus, also known as COVID-19), war, civil disorders, strikes or other labor difficulties, shortage or failure of supply of materials, labor, fuel, power, equipment, supplies or transportation, or by any other cause not reasonably within the party's control, whether or not specifically mentioned, the party shall be excused, discharged, and released of performance to the extent such performance or obligation is so limited or prevented by such occurrence without liability of any kind. Provided, however, that if Tenant shall claim Force Majeure as grounds for its failure to meet the Construction Schedule, and such Force Majeure shall result in delays in Construction which when combined with any other delays, whether due to Force Majeure or otherwise, cause Tenant to be more than 365-days behind schedule, then Landlord may terminate this Lease immediately upon the giving of written notice of its decision to do so.

16.2 No Current Force Majeure. Landlord and Tenant acknowledge there are no conditions or events of Force Majeure in existence as of the Effective Date.

## SECTION 17. ANTI-DISCRIMINATION CLAUSE

17.1 During the performance of this Lease, the Tenant agrees:

17.2 In connection with the performance of work under this Lease including construction, maintenance, and operation of the facility, the Tenant will comply with all local, state, and federal laws regarding discrimination in employment because of age, race, color, religion, sex, marital status, or any other subsequently adopted protected class; provided, however, Tenant may, to the extent consistent with law, exercise preference in hiring its shareholders and other Alaska Natives.

17.3 The Lessee and their employees shall not discriminate, by segregation or otherwise, against any person on the basis of race, color, religion, sex, nationality, or any other subsequently adopted protected class by curtailing or refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally.

17.4 Tenant shall include and require compliance with the above non-discrimination provisions in any subcontract made with respect to the operations under this Lease.

## SECTION 18. MISCELLANEOUS

18.1 No Partnership. Nothing contained herein or in any instrument relating hereto shall be construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for debts or obligations of Tenant or any other party.

18.2 Time of the Essence. Time is hereby expressly declared to be of the essence of this Lease and of each and every term, covenant, agreement, condition and provision hereof.

18.3 Captions. The captions of this Lease preceding this Lease are for convenience and reference only, and are not a part of this Lease, and in no way amplify, define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

18.4 Meaning of Terms. Words of any gender in this Lease shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense requires.

18.5 Lease Construed as a Whole. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against Landlord or Tenant.

18.6 Severability. If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law; provided, however, that if any provision of this Lease relating to the payment of rents is to any extent found invalid or unenforceable, Landlord and Tenant agree to modify this Lease to provide for payment of rents comparable to the rents provided for herein. Should Landlord and Tenant be unable to agree as to any such modification, such controversy shall be determined by Arbitration in the manner provided in Section 15.

18.7 Effect of Assignment. The term "Landlord" means the person who from time to time holds all of the original Landlord's right, title and interest in and to the Leasehold Premises. Landlord shall have the right to freely assign or, otherwise transfer such right, title and interest and upon notice of such transfer given by the Landlord to the Tenant, the Landlord shall be entirely freed and relieved of all future covenants and obligations of Landlord hereunder except to the extent that the transfer is for purposes of security only;

provided that the release shall be effective only upon the assignee or transferee having expressly assumed, by duly recorded documents, all obligations of Landlord hereunder.

18.8 Survival. Each provision of this Lease which may require the payment of money by, to or on behalf of Landlord or Tenant or third parties after the expiration of the Term hereof or its earlier termination shall survive such expiration or earlier termination.

18.9 Memorandum of Lease. The parties agree to execute and acknowledge an appropriate memorandum of this Lease for public recordation purposes, so that public notice of the Term of this Lease hereof and the existence of the rights of Sections 11 and 15 hereof be given.

18.10 Amendment. This Lease may be amended only in writing, signed by both Landlord and Tenant.

18.11 Commissions. Landlord and Tenant mutually agree to save and hold each other harmless from any and all claims or demands, requests by real estate brokers, agents or finders with whom Landlord or Tenant may have dealt in connection with this Lease.

18.12 Notices. All notices, demands, requests, or other writings in this Lease provided to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, or by any mortgagee to either party may be given personally or may be delivered by depositing the same in the United States mail, certified, registered or equivalent, return receipt requested, postage prepaid, properly addressed, and sent to the following addresses:

LANDLORD:

City of Whittier  
P.O. Box 608  
Whittier, Alaska 99693

TENANT:

Tatitlek Sound Holdings LLC  
c/o Tatitlek Corporation  
Attn: Legal  
561 E. 36<sup>th</sup> Ave., Suite 400  
Anchorage, AK 99503

or to such other address as either party may from time to time designate by written notice to the other or to any mortgagee. Notices given by mail as aforesaid shall be deemed received and effective when actually received or on the third business day following such dispatch, whichever occurs first.

18.13 Attorneys' Fees. If any action at law or in equity or under the arbitration provisions of Section 15 is brought to recover any rent or other money due under this Lease, or for or on account of any breach of or to enforce or interpret any of the terms,

covenants, agreements or conditions of this Lease, or for the recovery of the possession of the Leasehold Premises, the prevailing party shall be entitled to recover from the other party full and complete reasonable attorney's fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.

18.14 Interest. Any amounts due one party to the other pursuant to the terms of this Lease, including amounts to be reimbursed one to the other, shall bear interest from the due date or the date the right to reimbursement accrues at ten and one-half percent (10.5%) per annum; provided, however, that such rate shall not exceed, in any event, the highest rate of interest which may be charged under applicable law without the creation of liability for penalties or rights of offset or creation of defenses. For purposes of interest calculations, the due date of amounts or the date the right to reimbursement accrues shall be deemed the date that it originally was owing but may have been disputed, as distinguished from the date of final settlement or the making of a judicial or arbitration award.

18.15 Governing Law. This Lease shall be construed according to and governed by the laws of the state of Alaska.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

LANDLORD:

CITY OF WHITTIER

By: \_\_\_\_\_

Jim Hunt

Its: City Manager

TENANT:

TATITLEK SOUND HOLDINGS LLC

By: Tatitlek Corporation

Its: Sole Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

On \_\_\_\_\_, 2021, Jim Hunt, City Manager of the City of Whittier, who is personally known to me, appeared and acknowledged before me that he signed this Amended and Restated Lease on behalf of the municipal corporation.

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My Commission expires: \_\_\_\_\_

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

On \_\_\_\_\_, 2021, \_\_\_\_\_ personally known to me,  
appeared and acknowledged before me that (s)he signed this Amended and Restated  
Lease on behalf of the Tenant.

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My Commission expires: \_\_\_\_\_

**EXHIBIT A**

**SURVEY**

**EXHIBIT B**

**PRELIMINARY CONSTRUCTION SCHEDULE**

**EXHIBIT C**

**PRELIMINARY CONSTRUCTION PLANS**

**ASSIGNMENT AND ASSUMPTION OF LEASE AND SUBLEASE LEASE  
AGREEMENT**

(Harbor Triangle Lots 6 & 7 – Whittier Alaska)

This ASSIGNMENT AND ASSUMPTION OF LEASE AND SUBLEASE AGREEMENT (Harbor Triangle Lots 6 & 7 – Whittier Alaska) (this "Assignment") is entered into as of \_\_\_\_\_, 2021 (the "Effective Date"), by and between Young S. Yoo and Kyung Yoo, individuals residing in the State of Alaska ("Assignor"), and Tatitlek Sound Holdings LLC, an Alaska limited liability company ("Assignee").

A. Assignor, as "Tenant", and the City of Whittier (the "City"), an Alaska municipal corporation ("Landlord"), as "Landlord", are parties to that certain Lease and Sublease, dated March 12, 2007 (the "Lease").

B. Assignor wishes to assign to Assignee, and Assignee wishes to assume, all of Assignor's rights, title, interest in and to, and obligations under, the Lease, under the terms and conditions set forth below, and to amend the terms of the Lease to, among other things, permit a new use on the Leasehold Premises (as defined in the Lease).

C. Section 12 of the Lease requires that Assignor obtain the consent of Lessor to any assignment by Assignor, and Landlord has consented to this Assignment, as evidenced by its signature below on the condition that the Assignee has agree to amend and restate the terms of the Lease in accordance with the terms of a certain Amended and Restated Lease, of even date herewith (the "Amended and Restated Lease"), between the City, as Landlord, and Assignee, as Tenant.

NOW, THEREFORE, for a good and valuable consideration, the receipt and sufficiency of which is hereby acknowledges, Assignor and Assignee hereby agree as follows:

1. Recitals; Definitions. The recitals set forth above are incorporated herein by reference. Except as otherwise defined herein, all initially capitalized terms herein have the meanings ascribed to such terms in the Lease.

2. Effectiveness of Assignment. This Assignment not become effective until satisfaction of the following conditions: (A) full execution of this Assignment by all parties; (B) Assignee's execution and delivery to Landlord of the Amended and Restated Lease. In the event that there is a failure of any of the foregoing conditions, this Assignment shall be deemed null, void, and of no force or effect.

3. Assignment and Assumption. Assignor hereby assigns to Assignee all of its right, title, interest and obligations as "Tenant" under the Lease. Assignee hereby accepts the foregoing assignment and assumes all of Assignor's rights, title, interest and obligations as "Tenant" under the Lease as of the Effective Date.

4. Successors and Assigns. This Assignment and the provisions hereof shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

5. Miscellaneous. This Assignment is made and delivered in the State of Alaska, and shall be construed under and governed by Alaska law. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Signatures appearing by facsimile, email, pdf or other electronic means shall be deemed as originals, and enforceable as such.

IN WITNESS WHEREOF, Assignor and Assignee have executed, and Seller has accepted and approved, this Assignment as of the Effective Date.

**ASSIGNOR:**

\_\_\_\_\_  
Young S. Yoo

\_\_\_\_\_  
Kyung Yoo

**ASSIGNEE:**

**TATITLEK SOUND HOLDINGS LLC**

By: Tatitlek Corporation

Its: Sole Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

## LANDLORD CONSENT

Landlord, pursuant to Section 12 of the Lease, hereby consents to the foregoing Assignment, effective as of the Effective Date, as evidenced by its signature below. This consent does not waive any restriction in the Lease concerning further assignment or subletting.

**LANDLORD:**

**CITY OF WHITTIER**

By: \_\_\_\_\_  
Its: \_\_\_\_\_



After recording, return to:

Kyung OK Yoo  
Po Box 405  
Seward, AK 99664

CC

**THIS COVER PAGE HAS BEEN ADDED TO  
THIS DOCUMENT BY**

**FIRST AMERICAN TITLE**

**TO PROVIDE SPACE FOR RECORDING DATA.  
THIS COVER PAGE APPEARS AS THE 1<sup>ST</sup>  
PAGE OF THE DOCUMENT IN THE OFFICIAL  
PUBLIC RECORD.**

**DO NOT DETACH**

**FORM  
LEASE AND SUBLEASE**

982982  
THIS LEASE and SUBLEASE ("Lease") is made and entered into as of the 12<sup>th</sup> day of March, 2007, by and between the City of Whittier, a municipal corporation ("Landlord"), and Young S. and Kyung Yoo ("Tenant").

**RECITALS**

A. Landlord is the owner of certain real property ("Whittier Land") located in Whittier, Alaska and more particularly described as Harbor Triangle Lots 6 & 7 of \_\_\_\_\_ subdivision according to Plat \_\_\_\_\_, Anchorage Recording District and shown on Exhibit A attached ("the Real Property").

B. Tenant desires to lease the Real Property from Landlord, for use in connection with Tenant's plans to develop an Oriental/Asian Restaurant and other improvements in accordance with the provisions of this Lease. The Real Property and all improvements constructed thereon are referred to collectively as the "Leasehold Premises."

**AGREEMENTS**

NOW, THEREFORE, it is mutually agreed between Landlord and Tenant:

**SECTION 1 PREMISES**

1.1 Lease. For and in consideration of Tenant's covenant to pay the rental and other sums provided for in this Lease and to perform the other covenants contained in this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the Real Property.

1.1.1 Access to Tidelands. Landlord also assigns and grants, without warranty of any kind whatsoever, to Tenant, a nonexclusive right to use Landlord's rights of access to tidelands as contained in Section 1.3 of the Ground Lease and Management Agreement dated 13 November, 1998 ("Ground Lease") including such rights as may be subsequently granted to Landlord pursuant to Section 1.3 of the Ground Lease.

1.2 Term. The term of this Lease shall commence as of March 12<sup>th</sup>, 2007 (the "Commencement Date"). The term of this Lease shall expire (unless renewed pursuant to Section 1.3 below) on March 12<sup>th</sup>, 2042 or earlier terminated pursuant to the terms hereof or by agreement of the parties hereto. Each twelve month period commencing on the Commencement Date or an anniversary of the Commencement Date shall be referred to herein as a "Lease Year."

1.2.1 Term to Be Inclusive. Whenever the word "Term" is used in this Lease, it shall be deemed to include the term described in Section 1.2, together with any exercised renewal period as described in Section 1.3.

1.3 Tenant's Right to Renew. Unless there shall exist a material default hereunder on the part of the Tenant, Tenant shall have the right to renew the Term at the end of the initial Term described in Section 1.2 above for one (1) additional period(s) of thirty-five (35) years ("Renewal Period") subject to the following provisions:

1.3.1 Notice. Notice of the exercise of such right to renew shall be given to Landlord prior to the beginning of the twelfth (12th) month preceding the date the initial Term is to end.

1.3.2 Terms and Conditions. During the Renewal Period all terms and conditions of this Lease shall continue to apply except that the rental rate will be established as described in Section 2.4



1.3.3 This section is intentionally omitted from this lease.

1.4 Landlord's Warranties. Landlord represents and warrants that:

(a) The Real Property shall, as of the Commencement Date, be free of all liens and encumbrances except;

(b) Landlord has the authority to enter into this Lease and its execution and delivery by Landlord has been duly authorized;

(c) Tenant shall at all times from and after the Commencement Date and for the balance of the Term of this Lease have the right to peacefully and quietly have, hold and enjoy the Leasehold Premises.

1.5 Tenant's Warranties. Tenant represents and warrants that Tenant has the authority to enter into this Lease and its execution and delivery by Tenant has been duly authorized.

1.6 Use. The Real Property is Leased to Tenant for the purpose of constructing and thereafter maintaining an Oriental/Asian Restaurant (the "Improvements") and for no other purpose unless such use is approved by Landlord in writing prior to commencement of such use.

1.6.1 Compliance with Laws. Tenant covenants that, at no cost or expense to Landlord, it will use and occupy the Leasehold Premises during the Term of this Lease in compliance with all applicable laws, ordinances, regulations and requirements of all federal, state and municipal governments having jurisdiction, and that, in the event the use or occupancy of the Leasehold Premises by Tenant or any subtenant shall constitute a violation of any such laws, ordinances, regulations or requirements, Tenant shall take all steps, promptly upon knowledge of such violation, reasonably necessary to remedy or prevent the same, as the case may be.

1.6.2 Compliance with Insurance Requirements. Tenant covenants that it will observe and comply with the requirements of all policies of liability, fire and other policies of insurance required to be maintained by Tenant at any time in force with respect to the Leasehold Premises, and Tenant shall, in the event of any violation or attempted violation of the provisions of this section by any subtenant, take steps promptly upon knowledge of such violation or attempted violation, to remedy or prevent the same, as the case may be.

1.6.3 Contests. Tenant shall have the right, after prior written notice to Landlord, to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant or Landlord or both, without cost or expense to Landlord, the validity or application of any law, ordinance, order, rule regulation or requirement of the nature referred to in Section 1.6.1 hereof, subject to the following:

(a) If by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrance of any lien, charge or liability of any kind against the Leasehold Premises or any part thereof and without subjecting Tenant or Landlord to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding; or

(b) If any lien, charge or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest as aforesaid and delay as aforesaid, provided that such delay would not subject Landlord to criminal liability or fine, and Tenant (i) furnishes to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence.



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Landlord, without cost to it, shall, subject to the foregoing, execute and deliver any appropriate papers which may be necessary or proper to permit Tenant so to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement.

1.7 Maintenance and Repairs. Tenant at its expense will keep the Leasehold Premises in good and clean order and condition, and will promptly make or cause others to make all necessary or appropriate repairs, replacements or renewals thereof, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen. All repairs, replacements and renewals shall be substantially equal in quality and class to the original work. Tenant waives any rights created by any law now or hereafter in force to make repairs to the Leasehold Premises at Lessor's expense, in that Landlord and Tenant have by this Lease made specific provision for such repairs and have their respective obligations thereto. Tenant, at its expense, will do or cause others to do every act necessary or appropriate for the preservation and safety of the Leasehold Premises by reason of or in connection with any excavation or other building operation upon the Leasehold Premises or any adjoining property, including, without limitation, all shoring up of foundations and walls of the Improvements or of the ground adjacent thereto, whether or not the owner of the adjoining property shall be required by any legal requirement to take such action or be liable for failure to do so.

## SECTION 2 RENT

2.1 Initial Rent. Tenant covenants and agrees to pay Landlord for the Leasehold Premises an annual rental ("Rent") of \$ 4800.00, (\$20.00 per square foot times the number of square feet in the Real Property) payable in twelve monthly installments, due, in advance, on the first day of each month (the monthly payment is \$ 400.00) subject to adjustment as provided in Section 2.2.

2.2 Adjustment of Rent. Effective as of the first day of the fifth (5th), tenth (10th), fifteenth (15th), twentieth (20th), twenty-fifth (25th) and thirtieth (30th) Lease Years, the Rent shall be adjusted to an amount equal to ten and one-half percent (10½%) of the then current appraised market value of the Real Property, considered as unimproved, unencumbered land as then restricted by applicable zoning laws. Eighteen months prior to the rent readjustment dates set forth above, Landlord at its expense shall provide Tenant with a current appraisal of the Real Property. Within 90 days after receipt of Landlord's appraisal Tenant shall notify Landlord that it accepts or rejects the appraisal. If Tenant accepts the appraisal the adjusted rent shall be calculated based on this appraisal. If Tenant rejects the Appraisal the parties shall meet for the purpose of attempting to agree upon the Fair Market Value of the Real Property. If Landlord and Tenant are unable to agree upon such market value at least twelve (12) months prior to the date a rent adjustment is to commence, then Landlord and Tenant shall agree on one real estate appraiser (who shall be an M.A.I. of the American Institute of Real Estate Appraisers or equivalent) who will determine the fair market value of the Real Property, considered as unimproved, unencumbered land as then restricted by applicable zoning laws.

2.3 Determination in Event of Dispute. If Landlord and Tenant cannot mutually agree upon an appraiser, then one M.A.I.-qualified appraiser shall be appointed by Tenant and one M.A.I.-qualified appraiser shall be appointed by Landlord within fifteen (15) days of notice by one party to the other of such disagreement; these two appraisers shall determine the fair market value of the Real Property, considered as unimproved, unencumbered land as then restricted by applicable zoning laws; provided, however, if either party fails to appoint an appraiser within such fifteen (15) day period, then the conclusion of the appraiser first appointed shall be final, conclusive and binding upon both parties. The appraiser(s) appointed shall proceed to determine fair market value within thirty (30) days following such appointment. The conclusion shall be final, conclusive and binding upon both Landlord and Tenant. If said appraisers should fail to agree, but the difference in their conclusions as to fair market value is ten percent (10%) or less of the lower of the two appraisals, the fair market value shall be deemed the average of the two.

If the two appraisers should fail to agree on fair market value, and the difference between the two appraisals exceeds ten percent (10%) of the lower of the two appraisals, then the two appraisers thus appointed



shall appoint a third M.A.I.-qualified appraiser, and, in case of their failure to agree on a third appraiser within fifteen (15) days after their individual determination of fair market value, either party may apply to the Presiding Judge of the Superior Court at Anchorage, Alaska requesting said Judge to appoint the third M.A.I.-qualified appraiser. The terms of such application shall require that the decision of the appraiser shall be delivered to the parties not later than four (4) months prior to the date on which a rent adjustment is to commence. The third appraiser so appointed shall determine the fair market value of the Real Property, considered as unimproved, unencumbered land as then restricted by applicable zoning laws, and the average of the two closest appraisals shall be final, conclusive and binding upon both parties. The fees and expenses of said third appraiser or the one appraiser if Landlord and Tenant agree thereon, shall be borne equally by Landlord and Tenant. Landlord and Tenant shall pay the fees and expenses of their respective appraisers if the parties have not agreed on a single appraiser.

2.4 Rent Payments. Rent shall be payable in equal monthly installments in advance in lawful money of the United States of America on the first day of each calendar month during the term of this Lease. All payments of Rent shall be made by Tenant to Landlord without notice on demand, at the place provided in Section 18.12. In the event any payment of Rent shall not be paid on or before five (5) days following the due date as provided in this Section, the delinquent amount shall be due together with interest accruing at the rate of eight percent (8%) from the due date until the date of payment.

2.5 Pro Rata Portions of a Month. If the Commencement Date occurs, or the Term expires, or there is to be a partial abatement of rental pursuant hereto, or an end to such abatement effective, on a date other than at the end or start of a calendar month, the Rent for such month shall be prorated for the month involved on the basis of the actual days in such month.

2.6 Offset of Rent. Rent shall not be withheld in whole or part because of an offset or counterclaim by Tenant.

### SECTION 3 ASSESSMENTS, SUBDIVISION AND SURVEY, AND UTILITIES; IMPOSITIONS; CONTEST OF IMPOSITIONS

3.1 Utilities. Tenant shall pay or cause to be paid when due, and shall indemnify, protect, defend and hold harmless Landlord and the Leasehold Premises from, all charges for public or private utility services to or for the Leasehold Premises during the Term, including without limiting the generality of the foregoing, all charges for heat, light, electricity, water, gas, telephone service, garbage collection and sewage service. Landlord shall have no liability whatsoever for the failure of any such service for any reason.

3.2 Impositions. Tenant shall pay when due and before any interest, penalty, fine or cost which may be added for nonpayment, each and every one of the following ("Impositions"):

(a) All real property taxes or payments in lieu thereof imposed with respect to the Leasehold Premises or any portion thereof;

(b) Taxes imposed upon the leasehold estate created by this Lease, the rents payable or paid by Tenant to Landlord, or a tax in any form against Landlord measured by income derived from the leasing or rental of the Leasehold Premises, specifically including without limitation any leasehold excise taxes and any business and occupation tax imposed upon Landlord with respect to rentals, but excluding any taxes on net income or taxes in lieu thereof imposed on Landlord;

(c) All taxes imposed on or with respect to personal property and intangibles located in or used in connection with the Leasehold Premises other than such property owned by subtenants of the Leasehold Premises;



(d) All assessments for public improvements or benefits including but not limited to all road improvement district and utility local improvement district taxes which are assessed during the Term of this Lease, and any similar assessments and charges;

(e) All other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other fees and charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character (including interest and penalties thereon), which at any time during or in respect of the Term may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Leasehold Premises or any part thereof, or any estate, right or interest therein, or any occupancy, use or possession of or activity conducted on the Leasehold Premises or any part thereof.

3.2.1 Installments. If by law any Imposition may at the option of the taxpayer be paid in installments, Tenant may exercise such option, and shall pay all such installments (and interest, if any) becoming due during the Term as the same become due and before any additional interest or any penalty, fine or cost may be added thereto, and shall at the end of the Term deposit with Landlord an amount sufficient to pay Tenant's pro rata share of all Impositions for the Lease Year in which this Lease terminates.

3.2.2 Proof of Payment. Tenant will furnish to Landlord, upon request, for inspection, within thirty (30) days after the date any Imposition would become delinquent (unless being contested in conformity with Section 3.3), official receipts of the appropriate taxing authority or other proof satisfactory to Landlord evidencing the payment of such Imposition.

3.3 Permitted Contests. Tenant at its sole cost and expense may, after prior written notice to Landlord, by appropriate legal proceedings conducted in good faith and with due diligence, contest the amount or validity or application, in whole or in part, of any Imposition or lien therefor, or any other lien, encumbrance or charge against the Leasehold Premises arising from work done or materials provided to or for Tenant, if, and only if:

(a) Neither the Leasehold Premises nor any part thereof or interest therein is or will be in any danger of being sold, forfeited or lost;

(b) Such delay would not subject Landlord to criminal liability or fine; and

(c) Tenant shall have furnished such security, if any, as may be required in the proceedings or as may be reasonably requested by Landlord.

Tenant shall indemnify, protect, defend and hold harmless Landlord and the Leasehold Premises from any lien or liability with respect to any such Imposition or contest thereof, including all costs and expenses related thereto.

3.4 Reimbursement to Landlord for subdivision and survey costs. Upon entering into this Lease Tenant shall pay Landlord \$ 0 (zero dollars) for reimbursement to Landlord of its costs in having obtained a survey of the Real Property.

#### SECTION 4 TENANT FINANCING OF IMPROVEMENTS

4.1 Leasehold Mortgages. Tenant, and its successors and assigns, shall have the unrestricted right to mortgage (which term shall include a deed of trust) and pledge this Lease to an institutional lender without Landlord approval and to another lender with prior written approval of Landlord. In no event shall Landlord subordinate its fee simple interest in the Real Property which is the subject of this Lease.

#### SECTION 5 CONSTRUCTION OF IMPROVEMENTS



5.1 Acceptance of Premises. Tenant has inspected the Real Property and will accept the same on the Commencement Date in its present condition.

5.2 Commencement of Construction. Tenant shall commence and proceed with construction and completion of the Improvements substantially in accordance with the construction plans and schedule approved by Landlord under Section 5.3 hereof and otherwise in accordance with and subject to the terms of this Lease and subject to delays caused by Force Majeure as defined in Section 16.

5.3 Approval of Plans and Schedule. Tenant shall construct the Improvements described in the Preliminary Construction Plans ("Preliminary Construction Plans"), according to the Construction Schedule attached hereto as Exhibits B and C, which are hereby approved by Landlord. In the event Tenant fails to comply substantially with the Construction Schedule set forth in Exhibit C, Landlord may terminate this Lease Agreement.

(a) No material changes shall be made in the Preliminary Construction Plans or Construction Schedule without the prior written approval of Landlord. Any material changes shall be reviewed by Landlord within ten (10) working days.

(b) Approvals by Landlord under this Section 5.3 shall not be unreasonably withheld or delayed. Provided, however, that the Landlord shall have the absolute and unfettered right to deny approval of (1) any changes to the Construction Schedule which when combined with previously approved changes, will result in a delay in the Construction Schedule of more than twelve (12) months; (2) changes to the project which would result in Tenant's failure to construct the Improvements identified in the Preliminary Construction Plans.

5.4 Hold Harmless. Tenant shall indemnify, protect and hold harmless Landlord and the Leasehold Premises from and against all claims and liabilities arising by virtue of, or relating to, construction of the Improvements or repairs made at any time to the Leasehold Premises (including repairs, restoration and rebuilding).

5.5 Permits; Compliance with Codes. Tenant shall secure at its sole cost all building permits and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Improvements, or repairs, replacements or renewals to the Leasehold Premises as required by applicable laws, ordinances or regulations. Tenant shall cause all work on the Leasehold Premises during the Term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction.

5.6 Control and Indemnification. Landlord's approval of the Preliminary Construction Plans including any changes thereto, and Construction Schedule shall not render Landlord liable therefor, and Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims arising out of or from the use of such Preliminary Construction Plans. Nothing within this Section 5.6 shall be construed as a release or waiver of liability of any contractor with respect to any and all claims arising out of or from the use of such Preliminary Construction Plans.

5.7 Ownership of Improvements.

5.7.1 Tenant Ownership of Improvements. During the Term of this Lease, all Improvements constructed by Tenant including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, other than such property which is owned by subtenants of the Leasehold Premises, shall be the property of Tenant. At the expiration or earlier termination of this Lease, the Improvements and all additions, alterations and



improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, other than such property which is owned by subtenants or Tenant, shall become the property of Landlord.

**5.7.2 Landlord Ownership of Fill and Subsurface Improvements.** All subsurface improvements, including but not limited to fill, existing on or placed upon the Leasehold Premises shall belong to Landlord but shall be part of the premises leased to Tenant hereunder. Any fill added to, or placed upon, the Real Property during the Term of this Lease shall become the property of Landlord upon installation and become a part of the Leasehold Premises.

**5.8 Alterations and Additions.**

**5.8.1 Alterations and Additions.** Tenant shall have the right at any time and from time to time during the Term, so long as no default exists hereunder, to make, at its expense, changes, renovations, alterations and additions to the Improvements or any part thereof; provided, however, that any such change, renovation, alteration or addition:

(a) shall not change the use of the Real Property or reduce the fair market value of the Improvements below their value immediately prior to such change, alteration or addition, or impair their usefulness;

(b) shall be effected with due diligence in good and workmanlike manner, and in compliance with all legal requirements and insurance requirements;

(c) shall be promptly and fully paid for by Tenant; and

(d) shall be made, if the estimated cost of such change, renovation, alteration or addition exceeds thirty percent of Tenant's current assessed value of improvements (exclusive of any changes made in connection with any subleases not involving any structural change), in accordance with plans and specifications and modifications thereto prepared by an architect or engineer selected by Tenant and satisfactory to Landlord, provided that such plans and specifications and modifications thereto and all cost estimates have been approved in writing by Landlord and Tenant shall have furnished to Landlord such security as is satisfactory to Landlord to assure the completion of such change, renovation, alteration or addition. In the event that Landlord does not approve any such change, alteration or addition, it shall, within such fifteen (15) days of the receipt of plans and specifications or modifications thereto, so notify Tenant in writing, giving the reasons for such lack of approval. The parties shall then forthwith negotiate in good faith to resolve these difficulties. If a satisfactory resolution is not reached within an additional fifteen (15) days, the reasonableness of Landlord's disapproval shall be submitted to arbitration pursuant to Section 15 below. Each party shall bear the cost of such submittal incurred by it and the cost of the arbitrators shall be borne equally by the parties.

**5.8.2 Demolition and Reconstruction.** Tenant shall have the right at any time and from time to time during the Term, so long as no default exists hereunder, at its expense, to demolish part or all of the Improvements then existing if Tenant shall forthwith construct improvements upon the Land (the "Replacement Improvements") to replace such demolished Improvements, provided that (i) such Replacement Improvements shall be similar in type and quality to the facilities described in Exhibit B hereto, and (ii) in Landlord's judgment the Replacement Improvements will provide sufficient income to pay the Rent, provided that:

(a) prior to the commencement of any such demolition, Landlord shall have (i) received at least three (3) months' prior written notice from Tenant of the proposed demolition and construction, (ii) approved in writing the plans and specifications and modifications thereto for the proposed Replacement Improvements, prepared by an architect or engineer licensed in the State of Alaska selected by Tenant and satisfactory to Landlord, (iii) approved in writing the cost estimates for the proposed demolition and



construction, and (iv) received a contractor's completion bond from Tenant as shall be satisfactory to Landlord to assure the lien-free completion of such proposed demolition and construction;

(b) any such demolition and the construction of Replacement Improvements in connection therewith shall comply with the provisions of subsections (b) and (c) of Section 5.8.1; and

(c) Evidence of compliance of such demolition and reconstruction with the provisions of this Lease, including without limitation, insurance and legal requirements.

Tenant shall not demolish any portion of the Improvements, other than strictly in accordance with the provisions of this Section 5.8.2, without the prior written consent of Landlord, except for minor demolitions in connection with alterations or additions as are performed in compliance with the provisions of Section 5.8.1.

5.9 Surrender Upon Termination. Upon expiration or earlier termination of this Lease, Tenant shall remove Tenant's personal property and equipment and shall surrender the Leasehold Premises to Landlord; provided that Tenant shall not remove any appurtenant fixtures, machinery or equipment described in Section 1.6, or any additions to or replacements thereof made during the Term of this Lease, it being the intent of the parties that upon expiration or earlier termination of this Lease, Landlord shall receive a facility Tenant (or its sublessee) construct thereon. Tenant's personal property and equipment not removed by Tenant at expiration or other termination or within a reasonable time thereafter shall be considered abandoned and Landlord may take title to and use such property or at Landlord's sole discretion dispose of such property in any reasonable manner and Tenant shall reimburse Landlord for all costs and expenses of such disposal.

5.10 As-Built Drawings. Upon completion of the Improvements, Tenant shall deliver to Landlord two copies each of as-built drawings for such Improvements and an as-built survey showing the location of the Improvements, including all underground Improvements and fill.

5.11 Discharge of Liens. Tenant will not directly or indirectly create or permit to be created or to remain, and will discharge any mortgage, lien, security interest, encumbrance or charge on, pledge of or conditional sale or other title retention agreement with respect to the Leasehold Premises or any part thereof, or with respect to Rent, or any other sums payable under this Lease, other than (a) this Lease; (b) liens for Impositions not yet payable, or payable without the addition of any fine, penalty interest or cost for nonpayment, or being contested as permitted by Section 3.3; (c) liens of mechanics, materialmen, suppliers or vendors, or rights thereto, incurred in the ordinary course of business for sums which under the terms of the related contracts are not at the time due, provided that adequate provision for the payment thereof shall have been made; (d) a leasehold mortgage permitted by Section 4.1; (e) a security interest in furniture, fixtures and equipment given as additional security for a leasehold mortgage permitted by Section 4.1; (f) any purchase money security interest in furniture, fixtures and equipment given to any vendor thereof; (g) any interest in furniture, fixtures and equipment given as security for the payment of money borrowed for the purchase price thereof and (h) arising solely from the conduct of Lessor. Lessor shall have the right to post notices of nonresponsibility in conspicuous places on the Leasehold Premises. Tenant shall give Lessor no less than twenty (20) days' prior notice in writing before commencing the work or the furnishing of materials for any change, renovation, alteration, addition or restoration so that Lessor may post notices of nonresponsibility in conspicuous places on the Leasehold Premises.

## SECTION 6 DAMAGE OR DESTRUCTION

6.1 Repairs and Alterations. In the event of damage to or destruction of the Improvements:

6.1.1 Tenant's Obligation to Repair. If the same can be made under then existing laws, ordinances, statutes or regulations of any governmental authorities applicable thereto (or can be so made with



minor and nonmaterial changes to the former condition and form of property damaged or destroyed), Tenant shall effect, and Landlord and Tenant agree that the funds derived from insurance acquired pursuant to Section 7 shall be made available to effect, the repair and reconstruction of the Improvements so damaged or destroyed to substantially its condition prior to said damage or destruction. If insurance funds are not adequate, Landlord may require Tenant to escrow prior to the commencement of any construction work a sufficient sum so that taken together with the insurance funds available for construction purposes, is equal to or exceeds the cost of all labor, materials and other construction costs, direct and indirect to fully complete the repairing, restoring and/or rebuilding of the Improvement as aforesaid.

All such repair work shall be carried on in accordance with plans and specifications prepared by a licensed architect or engineers approved by Landlord (acting reasonably) if such an architect or engineer is reasonably required, given the scope and nature of the work. No extras or changes in plans and specifications shall be made by Tenant without first (A) giving written notice of such changes to Landlord and obtaining Landlord's approval thereof (which approval shall not be unreasonably withheld or delayed), and (B) depositing into escrow additional funds sufficient to pay for such extras or changes, and (C) as to any such changes which, together with all other changes theretofore made, involve over thirty percent of current assessed value of Tenant's improvements and as to any changes which involve fundamental or material changes in the uses permitted by this Lease, obtaining the written consent of Landlord (which consent shall not be unreasonably withheld).

**6.1.2 Tenant's Election to Repair.** If funds in excess of thirty percent of the available insurance funds would be required to effect the repairs or reconstruction described in Section 6.1.1 or if such reconstruction or rebuilding cannot be made under then existing laws, ordinances, statutes or regulations of any governmental authority applicable thereto (and cannot be so made with changes to the former condition and form of the Improvements damaged or destroyed such that the repaired or reconstructed Improvements have substantially the same economic value as the Improvements had immediately prior to the damage or destruction), and, in either such event, the parties hereto are unable during a period of sixty (60) days after the determination of the insurance surveyor with respect to such damage or destruction to agree in writing on a construction program, then the Term shall end as of the date of such damage or destruction and the insurance proceeds collected as a result of such damage or destruction shall be distributed as provided in Section 7.6(ii); provided, however, if such reconstruction or rebuilding can be made under such existing laws, ordinances, statutes and regulations (or can be so made with changes to the former condition and form of the Improvements damaged or destroyed such that the repaired or reconstructed Improvements have substantially the same economic value as the Improvements had immediately prior to the damage or destruction), but the cost of so repairing or reconstructing such damage or destruction (after deducting available insurance proceeds) is in excess of thirty percent of the available insurance funds would be required to effect the repair and restoration as provided in Section 6.1.1, and the Term shall not end as of the date of such damage or destruction, if Tenant (i) gives notice to that effect to Landlord within sixty (60) days after the determination of the insurance surveyor with respect to said damage or destruction; and (ii) promptly demonstrates to the reasonable satisfaction of Landlord that it can deposit into escrow the funds required or that will be required under the provisions of Section 6.1.1, whereupon the provisions of said Section 6.1.1 shall be fully applicable to such damage or destruction.

**6.2 Prompt Repair.** If Tenant, pursuant to the terms hereof, is obligated or elects to repair, replace, reconstruct or rebuild any structures, improvements or other property as hereinabove provided, the same shall be effected at Tenant's cost and expense (which may be paid from insurance proceeds available as above provided and subject to the provisions of Section 6.1.1), and Tenant shall diligently commence and continuously carry out such repair, replacement, reconstruction or rebuilding, to full completion as soon as possible, except to the extent of delays due to strikes, lockouts, shortages of labor or materials after due diligence in obtaining the same, governmental restrictions, fire, casualty, riot, act of God, act of the public enemy, or other causes beyond the reasonable control of Tenant after the exercise of due diligence, including diligence in contracting, and the



exercise of rights under contracts, with contractors and suppliers.

6.3 No Abatement. This Lease and the Term shall not terminate or be terminated because of damage to or destruction of any structure or Improvement on or in the Leasehold Premises except under and in accordance with the provisions hereinabove contained, and Tenant's obligation to pay the Rent due hereunder shall not be abated as a result of any such damage or destruction or during any period of repair or reconstruction.

6.4 Damage During Last Ten (10) Years of Term. If there occurs during the last ten (10) years of the Term damage or destruction to any structure or Improvement on or in the Leasehold Premises and the costs of repairing, restoring, replacing or rebuilding the same exceed fifty percent of the current assessed value of Tenant's improvements immediately prior to damage or destruction, then Tenant may elect to terminate the Term and, in such event, Tenant shall give notice to Landlord of its election within sixty (60) days after the determination by the insurance surveyor of the amount of damage, the Term shall thereupon terminate as of the date of such notice and Landlord shall be entitled to receive the full amount of any insurance proceeds collected as a result of such damage or destruction.

## SECTION 7 INSURANCE

7.1 Acquisition of Insurance Policies. Tenant shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, during the Term, the insurance described in this Section (or its then available equivalent), which insurance shall be subject to Landlord's review and approval, which approval shall not be unreasonably withheld, and shall name Landlord and ARRC with respect to ARRC Land as additional co-insureds. Policy limits may be reviewed annually by Landlord and may be adjusted if prudent, considering levels of inflation, risk of loss, premium expenses, and other relevant factors. Any dispute regarding policy limits shall be resolved by Arbitration as provided in Section 15 hereof.

7.2 Types of Required Insurance. Tenant shall procure and maintain the following:

7.2.1 Comprehensive General Liability Insurance. Comprehensive general liability insurance covering all claims with respect to injuries or damages to persons or property sustained in, on or about the Leasehold Premises and the appurtenances thereto, including sidewalks and alleyways adjacent thereto, if any, with limits of liability (which limits shall be adjusted as provided in Section 7.1 above) no less than the following:

Bodily and Personal Injury and Property Damage Liability  
Five Hundred Thousand Dollars (\$500,000)  
each occurrence and aggregate.

7.2.2 Physical Property Damage Insurance. All risk physical damage insurance covering all real and personal property, excluding property paid for by subtenants or paid for by Tenant for which subtenants have reimbursed Tenant, located on or in, or constituting a part of, the Leasehold Premises, in an amount equal to at least one hundred percent (100%) of replacement value of all such property (or such lesser amount as Landlord may approve in writing). Such insurance shall afford coverage for damages resulting from (a) fire, (b) perils normally covered by extended coverage insurance used in the state of Alaska, (c) earthquake and flood, (d) explosion of steam and pressure boilers and mechanical and electrical apparatus located in the Leasehold Premises and (e) loss of rents and/or business interruption. Tenant shall not be required to maintain insurance for war risks; provided, however, if Tenant shall obtain any such coverages, then, for as long as such insurance is maintained by Tenant, Landlord shall be entitled to the benefits of (i) the first sentence of Section 7.3 hereof, and (ii) subparagraph (c) of such Section 7.3.

7.2.3 Builder's Risk Insurance. During construction of the Improvements and during any subsequent restorations, alterations or changes in the Leasehold Premises that may be made by Tenant at a cost



in excess of Twenty-five Thousand Dollars (\$25,000) per job, contingent liability and all builder's risk insurance in an amount reasonably satisfactory to Landlord. During construction of the Improvements, the all builder's risk insurance shall include insurance for earthquake risks.

7.2.4 Workers' Compensation Insurance. Workers' compensation and employer's liability insurance in respect of any work by employees of Tenant on or about the Leasehold Premises.

7.3 Terms of Insurance. The policies required under Section 7.2 shall name Landlord as additional co-insureds and Tenant shall provide to Landlord certificates of insurance and copies of policies obtained by Tenant hereunder promptly upon the request of Landlord. Further, all policies of insurance described in Section 7.2 shall:

- (a) Be written as primary plus umbrella policies not contributing with and not in excess of coverage that Landlord may carry;
- (b) Contain a replacement cost endorsement without deduction for depreciation;
- (c) Contain an endorsement providing that such insurance may not be materially changed, amended or canceled with respect to Landlord except after thirty (30) days' prior written notice from insurance company to Landlord; and
- (d) Contain an endorsement including an express waiver of any right of subrogation by the insurance company against Landlord and Landlord's officers, agents and employees to the extent such waiver is obtainable.

7.4 Landlord's Acquisition of Insurance. If Tenant at any time during the Term fails to procure or maintain such insurance or to pay the premiums therefore, Landlord shall have the right to procure the same and to pay any and all premiums thereon, and Tenant shall pay to Landlord upon demand the full amount so paid and expended by Landlord, together with interest thereon at the rate provided in Section 16.14 hereof from the date of such expenditure by Landlord until repayment thereof by Tenant.

7.5. Insurance Money and other Funds Held in Trust. All insurance money or condemnation proceeds as provided in Section 8, shall be held in trust and shall be applied as follows: First, for the purpose of defraying the cost of repairing, restoring, replacing and/or rebuilding any structure or improvement on or in the Leasehold Premises as hereinafter provided; and second, if the damaged or destroyed structure or improvement is not repaired, restored, replaced or rebuilt as hereinafter provided, said funds shall, except as provided in Section 6.4, be disposed of as provided in Section 7.6(ii).

7.6 Application of Proceeds of Physical Damage Insurance.

(a) In the event of any repair, replacement, restoration or rebuilding pursuant to Section 6.1.1 or 6.1.2, the proceeds of the insurance shall be applied to the cost of such work upon certificate of progress by the licensed architect or engineer in charge of the work. Any amounts payable to Tenant or any affiliate of Tenant for work or services performed or materials provided as part of any such repair, replacement, restoration or rebuilding shall not exceed competitive rates for such services or materials and Tenant shall, upon request of Landlord, make available to Landlord all books and records of Tenant relating to such work, services and materials. Upon completion of such repair, replacement, restoration or rebuilding in accordance with the provisions of this Lease, and the full payment therefor (so no liens, encumbrances or claims with respect thereto can be asserted against the Leasehold Premises, this Lease, Landlord or Tenant), any insurance proceeds received with respect to the damage or destruction involved, and not used, shall be paid to Tenant.

(b) In the event any damaged or destroyed structure or improvement is not restored, repaired



or replaced, the proceeds of any insurance collected with respect to such damage or destruction shall, except as provided in Section 6.4, be applied:

- (i) First, to the payment of any mortgage constituting a lien on the Leasehold Premises,
- (ii) Second, Landlord shall be paid an amount sufficient to restore the Real Property to its condition as of the Commencement Date, and
- (iii) Third, the balance of such proceeds shall be paid to Tenant.

7.7 Insurance Surveyor. The determinations required under Section 6 and this Section 7 shall be made by an independent qualified insurance appraiser selected by the parties, whose decision shall not be subject to arbitration. If the parties cannot agree on the insurance appraiser within thirty (30) days after the date of such damage or destruction, then the same shall be decided by arbitration pursuant to Section 15.

## SECTION 8 CONDEMNATION

8.1 Total Taking. In the event of the taking or condemnation by any competent authority for any public or quasi-public use or purpose of the whole of the Real Property at any time during the Term, the Term shall cease as of the Date of Taking by the condemner and all rental and other payments shall be apportioned as of the Date of Taking and the right of Landlord and Tenant to share in the proceeds of any award for the Real Property, Improvements and damages upon any such taking, shall be as follows:

8.1.1 Landlord's Share. The Landlord shall first receive a sum equal to the fair market value, as of the day prior to commencement of the condemnation proceedings, of the Real Property taken, considered as unimproved, unencumbered land (except for Tenant's interest under this Lease), as then restricted by applicable zoning laws, together with interest thereon from the Date of Taking to the date of payment at the rate paid on the award, and together with amounts owing Landlord from Tenant under this Lease as rental, damages for Tenant's breach or otherwise.

8.1.2 Tenant's Share. Except as otherwise provided for within this Section 8.1.2 Tenant shall be entitled to the entire balance of the award ("Award Balance"). If the Taking as above set forth shall occur at any time during the last ten (10) years of the initial Term or extended Term, Tenant shall be entitled to receive out of the award, with interest thereon, the Award Balance diminished by ten percent (10%) of such Award Balance for each full year (and in proportion for a fraction of a year) that has elapsed from the first day of said ten-year period to the Date of Taking; the remaining Award Balance and interest thereon, as well as the award for the Real Property pursuant to Section 8.1.1 and interest thereon, shall belong to the Landlord.

8.1.3 Determination of Tenant and Landlord Shares. If the values of the respective interests of Landlord and Tenant shall be determined according to the provisions of Sections 8.1.1 and 8.1.2 in the proceeding pursuant to which the Real Property shall have been taken or condemned, the values so determined shall be conclusive upon Landlord and Tenant. If such values shall not have been thus separately determined, such values shall be fixed by agreement between the Landlord and Tenant or if they are unable to agree within thirty (30) days following the date of the award, then the controversy shall be resolved by Arbitration under Section 15.

8.2 Substantial Taking. In the event of the taking in condemnation of less than the whole of the Real Property but materially all of the Real Property (which, as used herein is defined in Section 8.2.1. below), and the part of the Real Property that remains includes a part of the or Improvements, then the Lease Term shall cease as of the date of possession by the condemner as provided in Section 8.1.1 and as to the untaken portion of the Improvements, the parties shall endeavor to agree on the fair market value of such portion of the



Improvements as of the day prior to commencement of the condemnation proceeding, and if they fail to agree within ninety (90) days after either party requests negotiations to reach agreement, then the controversy shall be resolved by Arbitration as provided in Section 15. The value so agreed or determined in Arbitration as the fair market value of the untaken Improvements shall be paid by Landlord to Tenant and until paid shall be a charge on the share of the award to which Landlord shall be entitled in the condemnation proceeding but shall be payable only out of the proceeds of such award for land value and Landlord shall have no further liability therefore.

8.2.1 Determination of Substantial Taking. For the purposes of this Section, a taking or condemnation of materially all of the Real Property, as distinguished from a taking or condemnation of the whole of said Real Property, means a taking of such scope that the remaining part of the Leasehold Premises not taken cannot be adequately restored, repaired or reconstructed so as to constitute a complete functional unit of property of substantially the same usefulness, design and construction, having regard to the taking, as immediately before such taking, capable of producing, after the payment of all operating expenses thereof, the annual Rent and other charges herein reserved, the debt service charges on any then existing mortgages held by a permitted mortgagee (but not including a purchase money leasehold mortgage given on the sale of the Tenant's leasehold interest hereunder), and after the performance of all covenants, terms, agreements and provisions herein and by law provided to be performed and paid by the Tenant, a fair and reasonable net annual income, defined as ninety percent (90%) of the average net annual income produced by the Leasehold Premises during the three (3) year period immediately preceding such taking.

8.3 Partial Taking. In the event of a partial taking or condemnation, e.g., a taking or condemnation of less than materially all of the Real Property:

(a) The Term of this Lease (except as hereinafter provided) shall, nevertheless continue, but the annual Rent to be paid by Tenant under Section 2 shall thereafter be reduced in the ratio that the rental value of the portion of the Real Property taken or condemned bears to the rental value of the entire Real Property at the time of the taking or condemnation. If the parties cannot agree upon a just proportion of rent to be abated, the amount shall be determined in accordance with the Arbitration provisions of Section 15;

(b) The award shall be divided and shared by Landlord and Tenant as provided in Section 8.1.1 and 8.1.2 hereof;

(c) The Tenant shall have the right, to be exercised by written notice to the Landlord within sixty (60) days after the date of taking, to terminate this Lease as to such remaining part of the Real Property not so taken on a date to be specified in said notice not earlier than the date of such taking. In such case the Tenant shall pay and satisfy all Rent due and accrued hereunder up to such date of such termination and shall perform all of the obligations of the Tenant hereunder to such date and thereupon this Lease shall terminate. Should the parties be unable to agree as to whether the part not taken is susceptible of adequate restoration, repair or reconstruction as aforesaid, such controversy shall be determined by Arbitration in the manner provided in Section 15 of this Lease;

(d) If this Lease is not terminated as hereinabove provided, and if such taking occurs prior to the last fifteen (15) years of the Lease Term, then, as to the Real Property not taken in such condemnation proceeding, the Tenant shall proceed diligently, to the extent the portion of the condemnation award paid to Tenant is sufficient for such purpose, to make an adequate restoration, repair or reconstruction of the part of the Improvements not taken so as to restore, repair or reconstruct the Leasehold Premises, to the extent practicable, to a condition having the per square foot income generating capability of the Leasehold Premises prior to such taking.

8.4 Successive Takings. In case of a second or any other additional partial taking or takings from time to time, the provisions hereinabove contained shall apply to each partial taking.



8.5 Temporary Taking. If the whole or any part of the Real Property or of the Tenant's interest under this Lease be taken or condemned by any competent authority for its temporary use or occupancy, Tenant shall continue to pay, in the manner and at the times herein specified, the full amounts of the Rent and charges payable by Tenant hereunder; and this Lease shall continue and, except only to the extent that Tenant may be prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Tenant to be performed and observed, as though such taking or condemnation had not occurred. In the event of any such temporary taking, or condemnation Tenant shall be entitled to receive the entire amount of any award made for such taking, whether paid by way of damages, rent or otherwise, unless such period of temporary use or occupancy shall extend to or beyond the expiration date of the Term of this Lease, in which case such award shall be apportioned between the Landlord and the Tenant as of such date of expiration of the Term.

## SECTION 9 INSPECTION BY LANDLORD

9.1 Inspection of Premises. Landlord and Landlord's agent and representative shall be entitled, from time to time, upon reasonable notice to Tenant, to go upon and into the Leasehold Premises during normal business hours for the purpose of:

- (a) Inspecting the same; or
- (b) Inspecting the performance by Tenant of the agreements and conditions of this Lease.

During the last thirty-six (36) months of the Term of this Lease, Tenant shall permit inspection of the Leasehold Premises at reasonable times and for reasonable periods by or on behalf of prospective tenants and prospective purchasers.

9.2 Rights of Subtenants. Notwithstanding the provisions of Section 9.1, the rights of Landlord to enter into any portion of the Leasehold Premises which are subject to a sublease from Tenant to any subtenant, shall be subject to reasonable restrictions contained in such sublease which are applicable to Tenant and any provisions of applicable law.

## SECTION 10 INDEMNIFICATION

10.1 Tenant to Indemnify Landlord. Notwithstanding that joint or concurrent liability may be imposed upon Landlord by statute, ordinance, rule, regulation or order, Tenant shall upon demand indemnify, defend, hold harmless and reimburse Landlord from and against and for any and all liabilities, obligations, penalties, fines, suits, claims, demands, actions, costs and expenses of any kind or nature including without limitation reasonable architects', engineers', and attorneys' fees which may be imposed upon or asserted against Landlord by reason of any damage to any property or the Improvements on the Leasehold Premises, or injury to any person or persons occurring on or about the Leasehold Premises.

10.2 Legal Proceedings. If Tenant is required to defend any action or proceeding pursuant to this Section to which action or proceeding Landlord is made a party, Landlord shall also be entitled to appear, defend, or otherwise take part in the matter involved, at its election, by counsel of its own choosing, and to the extent Landlord is indemnified under this Section 10, Tenant shall bear the reasonable costs of Landlord's defense, including attorneys fees.

## SECTION 11 ENVIRONMENTAL PROVISIONS



### 11.1 General Obligations.

(a) Tenant shall comply with all environmental laws, orders and regulations of federal, state, and local authorities, and with any directive issued pursuant to law by any public officer thereof, which shall impose any order or duty upon Tenant pertaining to the construction, use or occupancy of the Leasehold Premises or any Improvements thereon by Tenant or any of its sublessees.

(b) Tenant shall have the right to contest any obligations imposed upon Tenant pursuant to the provisions of this section, and do defer compliance during the pendency of the contesting proceedings, provided that the failure of Tenant to comply will not subject Landlord to civil fine or criminal penalty.

(c) Notwithstanding the foregoing, in the event that Tenant's failure to promptly fulfill the contested obligations would pose an imminent threat to public health, public safety and/or the environment, Tenant shall immediately perform whatever actions may be required to abate the immediate threat. Thereafter, Tenant may contest the obligations and defer further compliance, as set forth above.

(d) Tenant shall provide Landlord with copies, of all documents served upon Tenant or its counsel by, and served by Tenant or its counsel upon, the governmental authority.

(e) Failure of Tenant to comply with the provisions of this section shall be an act of default under the terms of this Lease and shall entitle Landlord to pursue all applicable remedies. In addition, Landlord shall be entitled to collect from Tenant any fines, penalties, expenses of defense (including legal fees), expenses of compliance and other damages incurred by Landlord by reason of Tenant's default under this section.

11.2 Procedure to Follow upon Discovery of Potential Contamination. In the event that Tenant discovers any condition during the course of excavation or construction that would indicate the possible existence of hazardous substances on the Leasehold Premises (hereafter referred to as "contamination"), Tenant shall immediately suspend the work and notify Landlord. If Tenant knows or has reasonable cause to believe that the contamination occurred during the lease Term, then Tenant shall investigate the matter at its sole cost and expense and the responsibility for such contamination shall be governed by Section 11.4 below. If, however, the time of occurrence of the contamination is unknown, the Landlord shall investigate the matter at Landlord's initial cost and expense. If the substances are indeed hazardous, as defined under any statute or regulations of any governmental authority (including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., or AS 46.04.010, 46.08.010, or 46.09.010), then the following shall apply:

(a) The obligation to pay rent as to those lands shall be suspended from the date of discovery by Tenant of the evidence of hazardous substances to the extent specified in subsection (b)(2) below.

(b) If the parties agree or Tenant proves by a preponderance of the evidence either that the contamination occurred prior to the effective date of this Lease, or that the contamination occurred during the lease Term and is attributable to the negligence or willful act of Landlord or its employees or agents, then:

(1) Landlord shall bear full responsibility for any actions required by law in the same manner as if the existence of the contamination were known prior to execution of this Lease and as provided in subsection 11.3 below.

(2) Either party shall be entitled to terminate this Lease as to those lands which are contaminated by giving written notice of its election to do so within sixty (60) days after receipt of notice that such substances are hazardous or the date of determination that the contamination predated Tenant's occupancy or resulted from actions attributable to Landlord, whichever last occurs. The decision to terminate shall be exercised consistent with the covenant of good faith and fair dealing. If neither party elects to terminate,



Landlord shall take whatever actions are required by law to remediate, remove or otherwise clean up the premises when and as required under Section 11.3 below. The obligation to pay rent as to those lands shall be suspended from the date of discovery of the evidence of hazardous substances until remediation is complete, but only if and to the extent the Leasehold Premises are not usable and Tenant is not receiving rents from any subtenants with respect to such contaminated land.

(c) If none of the conditions stated in subparagraph 11.2(b) above apply, then Section 11.4 shall govern responsibility for remediating the contamination and Tenant shall reimburse Landlord for the cost of the initial investigation.

**11.3 Tenant's Indemnity for Contemporaneous Contamination.** Tenant agrees to indemnify, hold harmless and defend Landlord against all liability, cost and expense (referred to hereafter as "costs" and including, without limitation, any fines, penalties, diminution in value of the Leasehold Premises, assessment and clean-up costs, judgments, litigation costs and attorneys' fees) incurred by or levied against Landlord to the extent such costs arise as a result of Tenant's breach of section 11.1 of this Lease or as a result of any discharge, leakage, spillage, emission or pollution on or from the Leasehold Premises, without regard to whether such costs arise as a result of acts or omissions that occur on the Leasehold Premises during the Term of this Lease, including any extended term hereof, or thereafter; provided, however, that Tenant shall not be required to indemnify Landlord under this paragraph if or to the extent (1) the parties agree or a court of competent jurisdiction determines that such liability, cost or expense is caused by the willful misconduct or negligence of Landlord, or (2) if Tenant proves that the contamination occurred before occupancy by the City of the Leasehold Premises or any relevant portion thereof under this Lease or any other preexisting agreement between the parties. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

## SECTION 12 SUBLETTING AND ASSIGNMENT

**12.1 Subletting.** Tenant shall have the right to, directly or indirectly, sublease or sublet all or any part of the Leasehold Premises for any time or times during the Term not to exceed the Term of this Lease, provided such subletting is consistent with the purposes of, and uses permitted by this Lease.

**12.2 Covenant Against Assignments.** Except as permitted by Section 4.3 hereof, Tenant shall not, without the prior consent of Landlord, which consent shall not be unreasonably withheld, sell, assign, transfer, dispose of, mortgage, pledge or grant a security interest in this Lease, the leasehold estate it creates, or any of Tenant's rights hereunder, in whole or in part, nor shall Tenant's rights or interests under or in this Lease pass or be transferred or assigned by operation of law or otherwise.

**12.3 Covenants Binding on Successors and Assigns.** All of the terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto. If there occurs any assignment permitted hereunder, or made with the consent of Landlord, Tenant shall cause to be delivered to Landlord concurrently with or prior to such assignment, an instrument in writing signed and duly acknowledged by the assignee or successor by which such assignee or successor agrees to perform all of the terms and provisions of this Lease applicable to Tenant.

**12.4 Rights of Mortgagee.** Notwithstanding the foregoing provisions of this Section 12, Tenant shall have the right to mortgage or grant a deed of trust on the Leasehold Premises to a mortgagee, all subject to and as provided in Section 4 of this Lease.

## SECTION 13 LANDLORD AND TENANT TO FURNISH STATEMENT

**13.1 Landlord's Statement.** Landlord within twenty (20) days after written request to Landlord from Tenant or any mortgagee or prospective mortgagee, will furnish a written statement, duly acknowledged, which shall specify to the best of Landlord's knowledge:



- (a) The amount of the Rent due, if any;
- (b) Whether or not this Lease is unmodified and in full force and effect (or, if there have been modifications, whether or not the same are in full force and effect as modified and identifying the modifications);
- (c) Whether or not Tenant is in default and specifying the nature of any such default; and
- (d) Such other matters as Tenant or the mortgagee may reasonably request and which relate to the actual knowledge of Landlord.

13.2 Tenant's Statement. Tenant, within twenty (20) days after written request of the Landlord, will furnish a written statement, duly acknowledged, as to:

- (a) Whether this Lease is unmodified and in full force and effect (or, if there have been modifications, whether or not the same are in full force and effect as modified and identifying the modifications);
- (b) Whether there are any defaults thereunder on the part of Landlord to the knowledge of Tenant and specifying the nature of such defaults, if any; and
- (c) Such other matters as Landlord may reasonably request and which relate to the actual knowledge of Tenant.

## SECTION 14 DEFAULT

14.1 Event of Default. The occurrence of any of the following shall constitute an Event of Default:

14.1.1 Payments to Landlord. Failure of Tenant to duly and punctually make any payment owing to Landlord hereunder, or to pay any Imposition (except when non-payment or delay is expressly permitted by Section 3) or any other payment which if not paid may result in a lien on the Leasehold Premises as and when the same becomes due and payable, or the failure to maintain any of the insurance coverage required hereunder or pay any of the premiums required to be paid with respect thereto, and such occurrence or failure continues for a period of fifteen (15) days after notice thereof given to Tenant by Landlord.

14.1.2 Construction of Improvements and Construction Schedule. Tenant's failure to commence construction of the Improvements in the manner described in the Preliminary Construction Plans on or before the "Start Date" as defined in the Construction Schedule. Or, after commencing construction, Tenant's fails to continue and maintain its construction obligations in accordance with Tenant's Construction Schedule and such failure continues for a period of more than 180 days after Landlord has given Tenant notice that it is not in compliance with the Construction Schedule and/or the Preliminary Construction Plans.

14.1.3 Other Covenants. Tenant being in breach of, or Tenant failing to perform, comply with, or observe any other term, covenant, warranty, condition, agreement or undertaking contained in or arising under this Lease of the Ground Lease and such failure continues for a period of thirty (30) days after notice thereof is given to Tenant.

14.2 Termination of Lease. In addition to all other rights and remedies available to Landlord by law or equity, Landlord may, at any time after the occurrence of any Event of Default, and while the same remains unremedied, give notice to Tenant of its intention to terminate this Lease, in which case, subject to the provisions of Section 4.2, unless within fifteen (15) days after the giving of such notice, the condition creating



or upon which it is based such an Event of Default is cured, this Lease shall terminate as of the expiration of such fifteen (15) days and Landlord may reenter upon the Leasehold Premises and have possession thereof; provided, however, if the Event of Default is one described in Section 14.1.3 and is one which can be cured, but cannot with due diligence (without regard to the availability of funds or the financial condition of Tenant) be cured prior to the expiration of the period provided herein, and Tenant proceeds promptly and thereafter prosecutes with all due diligence the curing of such default, then the time for curing of such Event of Default shall be extended for such period as may be necessary to complete the same with all due diligence.

Notwithstanding the foregoing provisions of this Section 14.2 or the provisions of Section 14.1.3 hereof, if the asserted default is subject to arbitration pursuant hereto, and the existence of such default is being contested by the party assertedly in default, if and so long as such party is cooperating and acting in good faith to complete the arbitration proceeding with respect thereto as expeditiously as possible, the time for curing such default shall commence upon the rendering of the arbitration decision with respect thereto, or other resolution thereof, whichever occurs first; provided, however, if the matter being arbitrated is capable of performance to the extent not reasonably in dispute (e.g., the undisputed portion of monies owing), performance to the extent not in dispute shall be a condition precedent to the effectiveness of this sentence.

**14.3 Effect of Termination.** Subject to the provisions of Section 4 (relating to the rights of mortgagees) upon termination of this Lease by expiration of the Term or pursuant to this Section 14, all rights and privileges of Tenant and all duties and obligations of Landlord hereunder shall terminate. Immediately upon such termination, and without further notice to any other party, Landlord shall have the right to assert, perfect, establish and confirm all rights reverting to Landlord by reason of such termination by any means permitted by law, including the right to take possession of the Leasehold Premises together with all Improvements thereto, fixtures therein (including trade fixtures) and any and all alterations and Improvements which may be constructed upon or to the Leasehold Premises, with or without process of law, and to remove all personal property from the Leasehold Premises and all persons occupying the same and to use all necessary lawful force therefor and in all respects to take the actual, full and exclusive possession of the Leasehold Premises and every part thereof as Landlord's original estate, thereby wholly terminating any right, title, interest or claim of or through Tenant as to the Leasehold Premises and the improvements, fixtures and alterations thereto, and all personal property located on the Leasehold Premises, all without incurring any liability to Tenant or to any person occupying or using the Leasehold Premises for any damage caused or sustained by reason of such entry or such removal, except for damage resulting from Landlord's negligence in effecting such removal, and Tenant agrees to indemnify, protect and save harmless Landlord, and all employees, agents and representatives of Landlord, from all costs, loss or damage arising or occasioned thereby to Tenant, or its agents, employees, officers, guests, invitees or tenants, except as limited hereinabove.

**14.4 Damages and Remedies.** The exercise by Landlord of any remedy arising by virtue of an Event of Default shall not be considered exclusive, and Landlord may exercise any and all other rights or remedies provided by this Lease or by law or equity. The termination of this Lease by expiration of the Term or pursuant to this Section 14 shall not extinguish the right of either party to collect damages arising from the breach of this Lease by the other party. Tenant shall be liable for rentals accruing up to the end of the Term specified in this Lease notwithstanding the earlier termination of this Lease due to an Event of Default and the reentry of Landlord before the normal expiration of the Term as established herein or pursuant hereto, except that Landlord shall make reasonable and diligent efforts to rerent the Leasehold Premises upon such terms as it sees fit in its reasonable discretion and for a term which may expire either before or after the specified termination date of the Term herein, and Tenant shall pay to Landlord all rent and other sums which would be payable hereunder by Tenant if no such termination and reentry had occurred, less the net proceeds, if any, of any such reletting after deducting Landlord's expenses in connection with such reletting, including but not limited to repossession costs, brokerage commissions, legal expenses, employee costs and expenses, alteration costs and other such reletting preparation expenses, and Tenant shall pay such current damages to Landlord on the days on which such rental would have been payable hereunder if no such termination and repossession and reentry had occurred.



**14.5 Assignment of Subrents.** Tenant assigns to Landlord all subrents and other sums falling due from subtenants, licensees and concessionaires (referred to as "Subtenants" in this paragraph 14.5) during any period in which Landlord has the right under this Lease, whether exercised or not, to reenter the Leasehold Premises for Tenant's default, and Tenant shall not have any right to such sums during that period. Landlord may at Landlord's election reenter the Leasehold Premises and Improvements with or without process of law, without terminating this Lease, and either, or both, collect these sums or bring action for the recovery of the sums directly from Subtenants. Landlord shall apply all such collected subrents as provided in Section 14.6. Tenant shall nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all sums required of Tenant under this Lease, plus Landlord's expenses, less the avails of the sums assigned and actually collected under this Section 14.5. Landlord may proceed to collect either the assigned sums or Tenant's balances, or both, or any installment or installments of them, either before or after expiration of the Lease Term, but the period of limitations shall not begin to run on Tenant's payment until the due date of the final installment to which Landlord is entitled under this Lease, nor shall it begin to run on the payments of the sums assigned under this Section 14.5 until the due date of the final installment due from the respective Subtenants.

**14.6 Application of Sums Collected by Landlord.** Landlord shall apply all subrents and proceeds of reletting as follows: first, to the payment of reasonable expenses (including attorneys' fees and brokers' commissions or both) paid or incurred by or on behalf of Landlord in recovering possession, placing the Leasehold Premises and Improvements in good condition, and preparing or altering the Leasehold Premises or Improvements for reletting; second, to the reasonable expense of securing new lessees; third, to the fulfillment of Tenant's covenants to the end of the Lease Term; and fourth, to Tenant's uses and purposes.

**14.7 Reasonable Rental Value Determination.** Landlord may at any time after a termination of this Lease pursuant to this Section 13, recover from Tenant the worth at such time (discounted to value at the time of termination) of the excess, if any, of the amount of the rent reserved in this Lease for the balance of the Term (had such termination not occurred) over the then reasonable rental value of the Leasehold Premises for the same period, such "reasonable rental value" being the amount of rental which Landlord can reasonably be expected to obtain as rent for the remaining balance of the Term (to its normal expiration date had such termination not occurred). Upon rerenting of the Leasehold Premises by Landlord, Tenant shall be liable to Landlord for the costs and expenses of rerenting and of such alterations and repairs as may be reasonably incurred by Landlord in readying the Leasehold Premises for such rerenting.

**14.8 No Waivers.** No failure by any party hereto to insist upon the strict performance of any provision of this Lease or to exercise any right, power or remedy consequent to any breach thereof, and no waiver of any such breach, or the acceptance of full or partial rent during the continuance thereof, shall constitute a waiver of any such breach or of any such provision. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the rights of any party hereto with respect to any other then existing or subsequent breach.

**14.9 No Offsets.** Tenant shall not assert any breach of an obligation, warranty or duty of Landlord as, and no such breach shall constitute, a defense, offset, excuse or counterclaim to any obligation of Tenant hereunder, but Tenant may, subject to the other provisions of this Lease, pursue independent remedies for any such breach by Landlord.

**14.10 Payment by Landlord of Tenant's Defaulted Payments.** In case of default on the part of Tenant to pay any money, or do any act to satisfy any of the obligations or covenants which it is required to pay, do, or satisfy under the provisions of this Lease, Landlord may, at its option, after notice to Tenant, pay any or all such sums, or do any or all such acts which require the payment of money, or incur any expense whatsoever to remedy the failure of Tenant to perform any one or more of the covenants herein contained. Tenant shall repay the same to Landlord on demand together with interest at the rate provided in Section 18.14 hereof, such interest to be calculated from the date payment is made by Landlord.

## SECTION 15 ARBITRATION

15.1 Arbitration. The disputes described in Sections 5.8.1, 7.1, 7.7, 8.1.3, 8.2, 8.3, 14.2 and 18.3, and no other, shall be subject to arbitration. Such arbitration ("Arbitration") shall be in accordance with the Arbitration Rules for the Real Estate Industry promulgated by the American Arbitration Association as then in effect, each party to appoint one arbitrator and those two arbitrators to appoint a third arbitrator. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof, subject, however, to the provisions of AS 09.43.010 et seq. (the "Alaska Uniform Arbitration Act") which are not in conflict with said Rules; provided, however, if such Association is not then functioning or such Rules are not then in effect, Arbitration shall be conducted in accordance with the requirements of the Alaska Uniform Arbitration Act, or such other provisions of the statutory laws of the State of Washington as may be enacted in lieu of the Alaska Uniform Arbitration Act, one arbitrator to be appointed by each of the parties hereto, and those two arbitrators to promptly appoint a third arbitrator. All such arbitration proceedings shall take place in Anchorage, Alaska. In any such arbitration proceeding, each party shall have full access to the books and records of the other party and the power to call for testimony any employee, agent or officer of any other party and all other rights to discovery afforded under the then applicable Alaska Rules of Civil Procedure or rules or laws applicable to Alaska Superior Court proceedings adopted in lieu thereof, shall be applicable, all of which shall be fully enforceable by the arbitrators or, if they fail to effect such enforcement, by the Superior Court of the State of Alaska at Anchorage, Alaska.

## SECTION 16 FORCE MAJEURE

16.1 Force Majeure. If the performance by either of the parties of their respective obligations under this Lease (excluding monetary obligations) is delayed or prevented in whole or in part by any acts of God, fire or other casualty, floods, storms, explosions, accidents, epidemics, war, civil disorders, strikes or other labor difficulties, shortage or failure of supply of materials, labor, fuel, power, equipment, supplies or transportation, or by any other cause not reasonably within the party's control, whether or not specifically mentioned, the party shall be excused, discharged, and released of performance to the extent such performance or obligation is so limited or prevented by such occurrence without liability of any kind. Provided, however, that if Tenant shall claim Force Majeure as grounds for its failure to meet the Construction Schedule, and such Force Majeure shall result in delays in Construction which when combines with any other delays, whether due to Force Majeure or otherwise, cause Tenant to be more than 365 days behind schedule, then Landlord may terminate this Lease immediately upon the giving of written notice of its decision to do so.

## SECTION 17 THIS SECTION IS INTENTIONALLY OMITTED FROM THIS LEASE

## SECTION 18 MISCELLANEOUS

18.1 No Partnership. Nothing contained herein or in any instrument relating hereto shall be construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for debts or obligations of Tenant or any other party.

18.2 Time of the Essence. Time is hereby expressly declared to be of the essence of this Lease and of each and every term, covenant, agreement, condition and provision hereof.

18.3 Captions. The captions of this Lease and the table of contents preceding this Lease are for convenience and reference only, and are not a part of this Lease, and in no way amplify, define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

18.4 Meaning of Terms. Words of any gender in this Lease shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense requires.



18.5 Lease Construed as a Whole. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against Landlord or Tenant.

18.6 Severability. If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law; provided, however, that if any provision of this Lease relating to the payment of rents is to any extent found invalid or unenforceable, Landlord and Tenant agree to modify this Lease to provide for payment of rents comparable to the rents provided for herein. Should Landlord and Tenant be unable to agree as to any such modification, such controversy shall be determined by Arbitration in the manner provided in Section 15.

18.7 Effect of Assignment. The term "Landlord" means the person who from time to time holds all of the original Landlord's right, title and interest in and to the Leaschold Premises. Landlord shall have the right to freely assign or, otherwise transfer such right, title and interest and upon notice of such transfer given by the Landlord to the Tenant, the Landlord shall be entirely freed and relieved of all future covenants and obligations of Landlord hereunder except to the extent that the transfer is for purposes of security only; provided that the release shall be effective only upon the assignee or transferee having expressly assumed, by duly recorded documents, all obligations of Landlord hereunder.

18.8 Survival. Each provision of this Lease which may require the payment of money by, to or on behalf of Landlord or Tenant or third parties after the expiration of the Term hereof or its earlier termination shall survive such expiration or earlier termination.

18.9 Memorandum of Lease. The parties agree to execute and acknowledge an appropriate memorandum of this Lease for public recordation purposes, so that public notice of the Term of this Lease hereof and the existence of the rights of Sections 11 and 15 hereof be given.

18.10 Amendment. This Lease may be amended only in writing, signed by both Landlord and Tenant.

18.11 Commissions. Landlord and Tenant mutually agree to save and hold each other harmless from any and all claims or demands, requests by real estate brokers, agents or finders with whom Landlord or Tenant may have dealt in connection with this Lease.

18.12 Notices. All notices, demands, requests, or other writings in this Lease provided to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, or by any mortgagee to either party may be given personally or may be delivered by depositing the same in the United States mails, certified, registered or equivalent, return receipt requested, postage prepaid, properly addressed, and sent to the following addresses:

Landlord: City of Whittier  
P.O. Box 608  
Whittier, AK 99693

Tenant: Kyung OK Yoo/ Young Shik Yoo  
P.O. Box 405  
Seward, AK 99664



or to such other address as either party may from time to time designate by written notice to the other or to any mortgagee. Notices given by mail as aforesaid shall be deemed received and effective when actually received or on the third business day following such dispatch, whichever occurs first.

18.13 Attorneys' Fees. If any action at law or in equity or under the arbitration provisions of Section 15 is brought to recover any rent or other money due under this Lease, or for or on account of any breach of or to enforce or interpret any of the terms, covenants, agreements or conditions of this Lease, or for the recovery of the possession of the Leasehold Premises, the prevailing party shall be entitled to recover from the other party full and complete reasonable attorney's fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.

18.14 Interest. Any amounts due one party to the other pursuant to the terms of this Lease, including amounts to be reimbursed one to the other, shall bear interest from the due date or the date the right to reimbursement accrues at ten and one-half percent (10.5%) per annum; provided, however, that such rate shall not exceed, in any event, the highest rate of interest which may be charged under applicable law without the creation of liability for penalties or rights of offset or creation of defenses. For purposes of interest calculations, the due date of amounts or the date the right to reimbursement accrues shall be deemed the date that it originally was owing but may have been disputed, as distinguished from the date of final settlement or the making of a judicial or arbitration award.

18.15 Governing Law. This Lease shall be construed according to and governed by the laws of the state of Alaska.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on this 12<sup>th</sup> day of MARCH, 2007.

LANDLORD:

City of Whittier

By Mark Earnest

Its City Manager

TENANT:

By Kyungjoo Kim

Its Owner/Partner

By Kyungjoo Kim

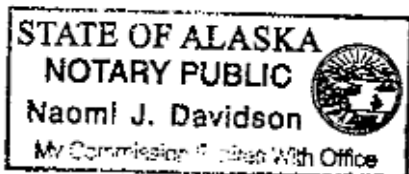
Its Owner/Partner

By Yang Fan

Its Owner/Partner

STATE OF ALASKA )  
 )ss.  
Third Judicial District )

On March 12, 2007, Mark Earnest City Manager of the City of Whittier, who is personally known to me, appeared and acknowledged before me that he/she signed the Ground Lease Agreement on behalf of the municipal corporation.

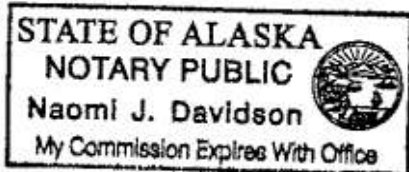


Naomi J. Davidson  
Notary Public for the State of Alaska  
My commission expires: with office



STATE OF ALASKA )  
 )ss.  
Third Judicial District )

On March 12, 2007, Kyung "OK" Yoo, who is personally known to me, appeared and acknowledged before me that he/she signed the Ground Lease Agreement on behalf of the of "Tenant."



Naomi J. Davidson  
Notary Public for the State of Alaska  
My commission expires: with office

STATE OF ALASKA )  
 )ss.  
Third Judicial District )

On 6 Nov, 2007, Kyung Yoo, who is personally known to me, appeared and acknowledged before me that he/she signed the \_\_\_\_\_ Lease Agreement on behalf of the of "Tenant."



Kristi Larson  
Notary Public for the State of Alaska  
My commission expires: \_\_\_\_\_

State of Alaska )  
 )ss  
3rd Judicial Dist. )

On this 2<sup>nd</sup> day of January, 2008, YOUNG S. YOO, who personally known to me, appeared and acknowledged before me that he/shesigned the Ground Lease Agreement on behalf of the tenant



Kristi Larson  
Notary Public in and for Alaska  
My Commission expires \_\_\_\_\_

### Ground Lease

Between

**The City of Whittier**

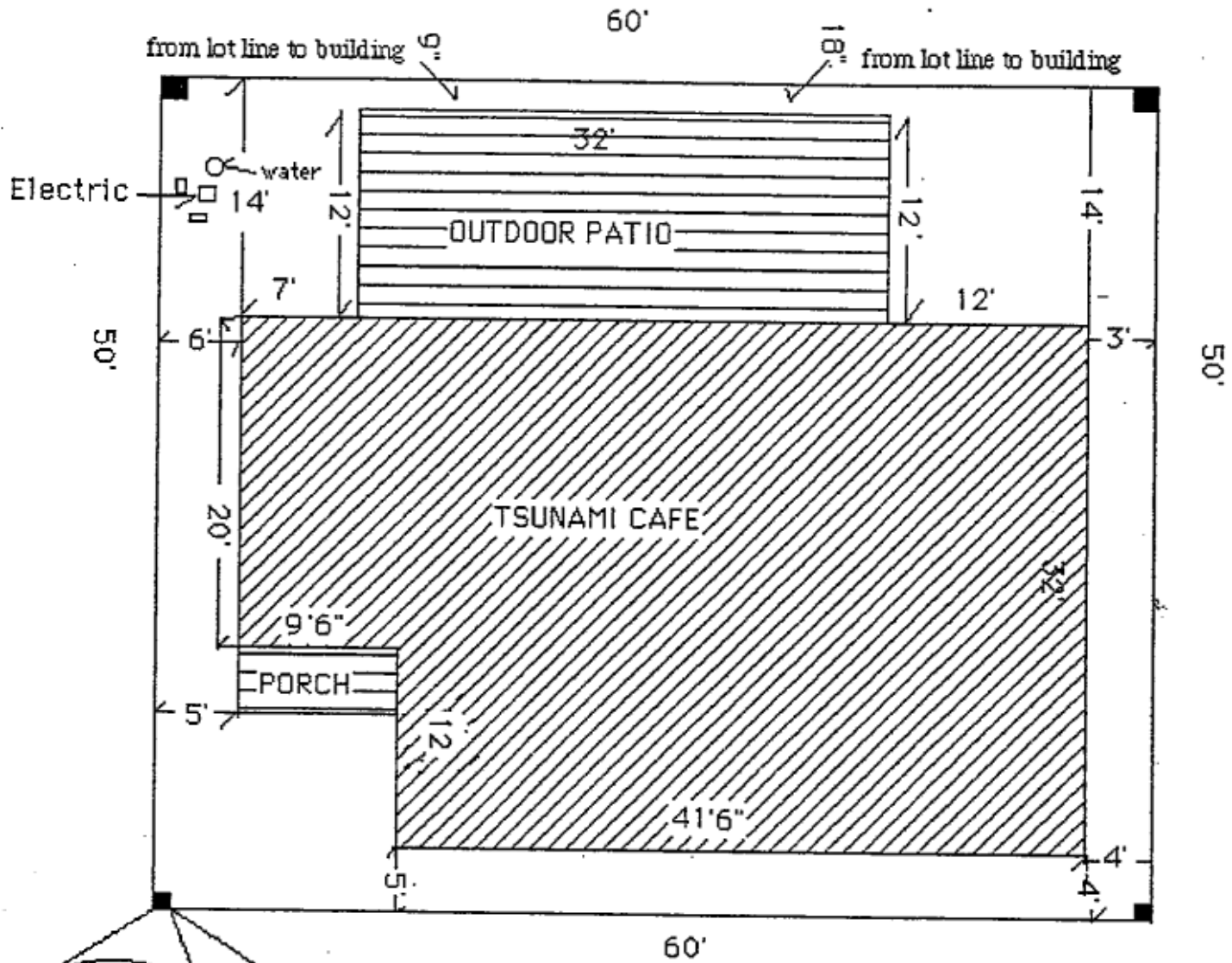
and

**Young Shik Yoo  
Kyung OK Yoo**



# AREA "A" LOT 687 *6A 647*

-Z-



PR TECH  
LS 7200

1/2 REBAR 3" Below Ground

SCALE: 1/2" = 5'



25 of 25  
2008-000316-0

163

WHITTIER, ALASKA  
October 6, 1997 DWL

## **Planned Tenant Improvements**

**Prince William Sound Salt Company tenancy at Lots 6 & 7 Harbor Triangle, Whittier, Alaska:**

**All work to be completed in compliance with the Whittier Municipal Code.**

**All work to be completed by experienced, licensed, bonded professionals.**

Phase I – Demise (to begin as soon as possible, likely November 2021)

- Demise interior of space in preparation for new interior setup and finishes
- Remove restaurant tables, cashier counter, and restaurant equipment
- Remove carpet and flooring
- Remove signage
- Prepare internal area for viewing space (for customers to view salt harvest process)

Phase II – Construction (to begin as soon as possible, likely March 2022)

- Install water tank for salt water
- Install water heating/evaporating equipment and other salt harvesting equipment
- Construct viewing area and transparent partition
- Paint interior
- Install flooring
- Complete interior trim work and all finished surfaces
- Paint exterior and install new signage
- Install shelving
- Decorate and appoint interior retail area

Phase III – Open to public (at start of summer/tourist season, likely May 2022)

- Public/customers will be able to view the salt harvesting process
- Retail sales of Prince Williams Sound Salt Company Co. products

## NOTICE OF INTENT TO ASSIGN GROUND LEASE

To the Whittier City Council and others whom it may concern:

After many years of owning and operating the China Sea Restaurant we have decided to make a change. We are currently negotiating a sale to The Tatitlek Corporation of the restaurant, building, and other property located at #6 Harbor Triangle Road, Whittier, Alaska.

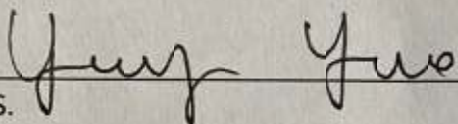
While we own the improvements, of course we do not own the land. In order for us to sell we will need to transfer our rights under the ground lease between us and the City of Whittier, dated March 12, 2007. A copy of that ground lease is attached.


This notice is meant to inform you of our intent to assign our rights under that ground lease to The Tatitlek Corporation. Per the ground lease, your approval is required for the assignment, as stated in Section 12.2:

12.2 Covenant Against Assignments. Except as otherwise permitted by Section 4.3 hereof, Tenant shall not, without prior consent of Landlord, which consent shall not be unreasonably withheld, sell, assign, transfer, dispose of, mortgage, pledge or grant a security interest in this Lease, the leasehold estate it creates, or any of the Tenant's rights hereunder, in whole or in part, nor shall Tenant's rights or interests under or in this Lease pass or be transferred or assigned by operation of law or otherwise.

The Tatitlek Corporation will provide the documentation you may require throughout the process of approving the assignment. We appreciate your assistance in this matter and hope to secure approval at your next meeting on July 20, 2021. Thank you for your consideration.

Sincerely,

  
\_\_\_\_\_  
Young S.

  
\_\_\_\_\_  
Kyung Yoo

## **Tatitlek Properties Inc.**

### Business Plan in support of request to approve transfer of ground lease at Harbor Triangle Lots 6 and 7, Whittier, Alaska

#### Introduction

Commercial real estate is an important part of the investments managed by The Tatitlek Corporation to benefit its shareholders. Tatitlek already holds a large portfolio of commercial real estate with 8 commercial properties in Anchorage (a mix of mostly class A, and some class B spaces) and various other commercial properties and an apartment complex in the lower 48. As the Village of Tatitlek is in the region, Tatitlek has been looking for ways to increase its presence in Prince William Sound, and to continue to increase its real estate holdings. Acquiring this property in Whittier furthers both of these goals.

#### Why Whittier

Tatitlek's experienced real estate team is well-positioned to add a Whittier property to its portfolio. Tatitlek and the current owner of the improvements at Lots 6 and 7, Harbor Triangle (the China Sea Restaurant) have agreed to a deal where Tatitlek will purchase that building and bring in a new tenant, Prince William Sound Salt Company (PWSSCO). Once Tatitlek owns the property, it will undertake tenant improvements to suit this new tenant, which will come at a cost of approximately \$100,000+ in improvements to the building. Tatitlek has the resources necessary to improve and maintain the building at a very high level, as it does its other properties.

Tatitlek and PWSSCO are aligned in that both want to sustainably invest in Prince William Sound, and bring out the best it has to offer. For PWSSCO that means literally bringing out the Sound's best by harvesting salt there through a deep ocean collection process, and then using green, non-plastic packaging to bring that pure product to market. PWSSCO is growing quickly, and is on its way to becoming a fixture in Whittier for a long time to come.

PWSSCO will use the space at Harbor Triangle lots 6 and 7 for production and retail sale of its salt products. Some of the space may be set aside for Tatitlek's use for a combination of native art display and gift shop retail. The upper level of the building will be for office use and occasional sleeping quarters depending on business needs. Tatitlek is investing in PWSSCO by providing a new space built out just for them, and Tatitlek will benefit from their success by having a long-term commercial tenant and larger presence in Prince William Sound.

Whittier also benefits from this arrangement. It will add production of a 100% sustainable, unique product in Whittier with the potential to access global markets. The retail sale and unique production of PWSSCO's salt will attract eco-tourists and traditional tourists alike, and should interest Whittier's cruise ship visitors as well. This Prince William Sound centric business model will provide jobs and a vibrant presence in Whittier.

### Tatitlek's Team

The strength of Tatitlek's real estate portfolio is more than the amount of property already under management—it is in the experience and judgment of its team. The core team driving this part of Tatitlek's business is Rob Bridges (General Counsel), Travis Vlasoff (Director of Real Estate), and Jeri Snyder (Property Manager):

Rob Bridges joined the Tatitlek Corporation in 2015 as General Counsel. Rob has over 20 years of experience managing business operations and risk. He previously served as Associate General Counsel of Altisource (NASDAQ: ASPS) and the Sr. Vice President/General Counsel of Williams & Williams, where he managed the Alaska real estate portfolio for many national banks. Tatitlek's real estate portfolio has grown by 100% since Rob took primary executive responsibility for its operations.

Travis Vlasoff is a licensed Alaska real estate broker, and has been Tatitlek's Director of Real Estate for 8 years. Travis has overseen the acquisition of several of Tatitlek's commercial properties, and is responsible for overseeing the day-to-day operations of Tatitlek's real estate management.

Jeri Snyder is an experienced real estate property manager with 10+ years of experience. Jeri manages the repair and maintenance of hundreds of thousands of square feet of commercial space. She is highly regarded for her organizational skills and professionalism.

This team is further supported by additional legal and administrative staff, and benefits from the guidance available from Tatitlek's Board of Directors, as well as its other executives over operations and finance.

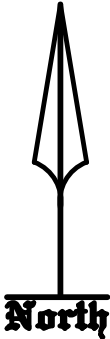
### Financial Considerations

Tatitlek's financial plan is simple—invest by buying the building and completing the tenant improvements, then recoup the investment, with a return, through rents over the next 10+ years. The purchase requires the transfer of the ground lease (conditioned on approval from Whittier City Council/Alaska Railroad) upon which the improvements sit.

Tatitlek is in a position to absorb any losses on the building acquisition and build-out, though the risk of that occurring is very low, and would be off-set by the intangible benefit of increasing the corporation's presence on Prince William Sound.

### Conclusion

Tatitlek has the resources and experienced team to renew, improve, and maintain the building at Lots 6 and 7 Harbor Triangle. With an up-and-coming tenant like PWSSCO, the upside is very high for both Tatitlek and Whittier.



## Harbor Fee Schedule Proposal for 2022

Preferential and Annual transient increase 5% from \$67.13 to \$70.49

This rate would include additional 5% sales tax for patrons invoiced in July

The 5% increase would be applied to the MRRF, 4yr average = \$28665.00

Monthly Transient Moorage remain the same @ \$15.30 increase 5% to \$16.07

Price adjustments do not reflect sales tax

Change effective date to April 1 – September 30

Invoiced on the 1<sup>st</sup> of each month

Not pro-rated

Daily Transient Moorage fee increase 5% from \$1.12 to \$1.18

Price adjustment does not reflect sales tax

Winter Transient Moorage fee increase 5% from \$45.00 to \$47.25

Sales tax does not apply as it is “off” tax season

Changed effective date from 15 Sept – Apr 15 to 1 October – 31 March

Must have the boat in the water for the entire period to qualify

Not pro-rated

Travel lift Remove all fees and cease operations

Launch Ramp Commercial Use Annual Permit \$500.00 (No Change)

Change Applies to all Commercial users that frequent the ramps (Jet ski, freight, hydraulic trailer for hire etc.)

Change to be effective at all ramps

Launch Ramp Freight Landing Fee Each Use \$125.00 (No Change)

Change to be effective at all ramps

Dry Storage Winter, Per Ft/Monthly \$4.00 (No Change)

Dry Storage Winter, Per Day \$6.00 (No Change)

Change, effective date to 1 Oct – 1 April

Change, vessel must remain on a wheeled trailer

Change, no vessels on blocks or boat stands

Long Term Boat Maintenance (Remove)

Area will be designated as parking when/if haul-out operations are deemed obsolete.

Boat Maintenance Fee \$25.00

Need to designate an area

Not to exceed 5 hours

Use in accordance with attached memo

Pure Used Oil Fee \$1.68 per gallon (Remove Fee)

Used Oil and Water \$3.68 per gallon (Remove Fee)

Used Glycol \$2.10 per gallon (Remove Fee)

Fuel (diesel) \$2.63 per gallon (Remove Fee)

Items are being dropped off throughout the harbor. Items are also being disposed of in dumpsters due to the fees associated. More customer friendly to accept for free and dispose of properly.

Parking Daily rate \$11.00 (No Change)

Parking Annual \$250.00 (No Change)

Applies to January – December per vehicle

*Need clarification and/or to codify our parking fees for business operating on and within the harbor. Current unwritten practice is business owners can purchase one parking pass for \$250.00 and receive two more passes for free. There has also been a practice of a business blocking off up to ten spaces for \$750.00 a year. I can find none of these fees or practices addressed in our code, the harbor handbook, or leases. Further clarification concerning this practice is required from the Council prior to 2022.*

**\*\*\*Port and Harbor Advisory Board recommended doing away with businesses/charters etc being given special parking rates moving forward\*\*\***

Parking – Truck & Trailer (when applicable) Daily rate per day \$22.00 (No Change)

**Automatic Rate Adjustments** Beginning January 1, 2023 and each January 1 thereafter, all Port and Harbor rates are to be adjusted annually beginning the first billing of each calendar year to reflect an average of the three previous published years' annual increases in the Consumer Price Index, All Items, 1982-84=100 for all Urban Consumers, Anchorage, Alaska Area ("CPI") as published by the United States Department of Labor, Bureau of Labor Statistics. (For example, 2023 rates will reflect an increase based on the average CPI for 2019, 2020 and 2021).



# Technical Memorandum

## Whittier Travelift Dock

**To:** Dave Borg, Whittier AK Harbormaster

**From:** John C. Daley, PE

**Subject:** Whittier Travelift Dock: Travelift Dock Load Rating

**Date:** September 2, 2021

**Project #:** 2920.01

### Basis of Analysis

Structural analysis of the existing dock system was performed on two levels. The first level of analysis involved verification of the global stability of the dock for vertical and lateral loading. The second level of analysis includes the verification of capacity of structural assembly components.

The existing Travelift machine is reported to be a 30-ton capacity unit. It is reported that a load rating of 15 tons was imposed at some point in time and this is the current operational limit. Current models are listed as 25 and 35 ton. Wheel loads and other information utilized for both the global analysis and the structural assembly analysis were based according to Travelift's literature (Marine Travelift, Inc.) for the different model shown below, as follows:

Travelift Model	15BFM	25BFMII	35BFMII
Maximum Lifting Capacity	33,000 Lbs	55,000 Lbs	77,000 Lbs
Shipping Weight	14,000 Lbs	19,000 Lbs	26,190 Lbs
Wheel Base	14'-6"	16'-6"	18'-6"

The global stability analysis was based on the following assumptions:

- Pile fixity was assumed at 5ft. below finish grade elevation (i.e. "mudline").
- All wood material is Douglas Fir-Larch with a grade of No.1 or better.
- Soils generally consisting of coarse, non-cohesive materials (i.e, sands, silty sands, etc.).
- City Dock trestle is spring supported against lateral movement at the seaward-most bent due to the other piles along the bent that support the city dock (not modeled) would resist partial lateral deflection of the trestle.
- The measured center to center wheel spacing of the existing Travelift does not match the current catalog listed width. Existing measured dimensions were used.
- Maximum operational speed of 3mph

- The 4x12 decking over the stringers does not act as a diaphragm to distribute the load laterally throughout the Dock system. These members were not considered in the RISA-3D model, as their existing connection to the stringers does not transfer lateral forces uniformly through the trestle.
- Battered Piles have a 3:12 slope
- Piles were measured in the field and modeled as 13in. diameter.

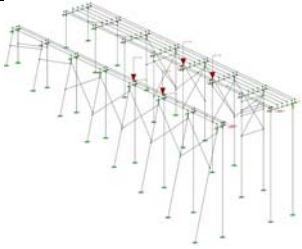
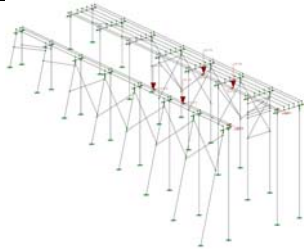
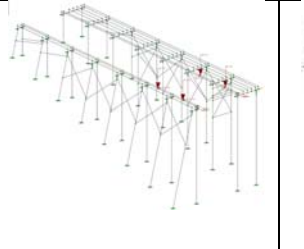
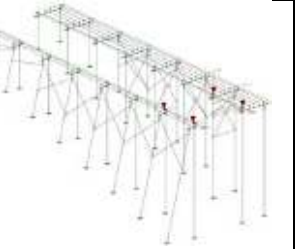
Note that no original design drawings or geotechnical information have been located or provided in support of the current investigation.

Vertical loading considered for the global stability analysis included vertical wheel loads induced by the Travelift, loaded to capacity, as well as the self-weight of the dock structure, itself. Lateral loads considered for the global stability analysis included lateral wheel loads for the various equipment types considered in the analysis. Lateral loading also considered breaking forces from the moving machine. This occurs when the Travelift is carrying max capacity while traveling down the dock, then breaks to come to a complete stop.

The scope of this analysis considered general overturning resistance of the structure based soil-structure interaction only inasmuch as was necessary to confirm the axial and bending performance of the piles, themselves in resistance of expected loading. Pile capacity in existing soils is beyond the scope of this report.

In our analysis we placed the Travelift loads in various locations along the dock to see the behavior of the system as the Travelift moves along its tracks on the dock.

**Figure 1: Example of Travelift loading scenarios**

CASE 4 25BMFII TRAVELIFT DIRECTLY OVER LANDWARD PILES	CASE 5 25BMFII TRAVELIFT MIDSPAN BETWEEN LANDWARD PILES	CASE 6 25BMFII TRAVELIFT MIDSPAN BETWEEN SEAWARD PILES	CASE 7 25BMFII TRAVELIFT DIRECTLY OVER SEAWARD PILES
			

\*Load Cases 1-3 not shown, see supplementary RISA-3D report.

The structural assembly analysis was based on principles of general mechanics as well as allowable stresses tabulated according to the National Design Specification for Wood Construction (NDS), latest edition, published by the American Forest and Paper Association (AF&PA). Allowable stresses were reduced between 10% and 15% in consideration of material degradation due to elemental exposure and wear and tear over the dock's useful life to date. Other adjustments to tabulated design values were made on the basis of moisture content (i.e. "wet service" factors) as required by the NDS, and duration of load, as allowed.

## Conclusion

Based on the RISA-3D Analysis of the Dock with the three different Travelift machines and the aforementioned loads, we have concluded that none of the Travelift units can safely carry their rated design loads and that the dock should be load rated as follows:

- **15BFM**- 26,400 lb., or roughly 80% of maximum lifting capacity
- **25BFMII**-20,900 lb., or roughly 38% of maximum lifting capacity
- **35BFMII**- 28,490 lb., or roughly 37% of maximum lifting capacity

Note that we assume the 25BFMII is representative of the existing machine and therefore the lifts should be limited to 10 short tons or 20,000 lbs.

There are many reasons for this reduction of carrying capacity, such as:

- The age of the structure.
- No adequate existing diaphragm in the system to transfer lateral loads uniformly.
- Asymmetric bracing along both sides of dock.
- Missing or damaged brace members.
- Large unbraced lengths of brace members that fail in flexural buckling.
- Seaward-most piles have no/little lateral bracing.

Based on our analysis, and the approach taken to load the structure, it is our opinion that the Dock needs considerable redesign to allow any of the Travelift alternatives to carry their respective maximum carrying capacity. As currently exists, the piles do not have adequate capacity to support the expected loading from a vertical load and bending resistance standpoint. Tables 1-3 below show the results and demonstrates which member section would fail under their respective loads.

**Table 1: 25BFMII- Structural Assembly Analysis Summary**

Model: 25BFMII

Maximum Lateral Deflection (in.): 1.67 @ Node N143, LC7

Member Type (Section Set)	Stress Description	Actual Stress in Governing member (psi)	Tabulated Allowable Stress (psi)	Description	Pass/Fail
Stringer-1 12X16	Bending, $F_b$	1066	1,305	Governing Load: LC 6, M145 Comb. Bending and Axial Compression Unity Check $1.046 > 1.0$	Fail
	Shear, $F_v$	66	170		
	Axial Compression, $F_c$	16	749		
Stringer-2 6X16	Bending, $F_b$	695	1294	Governing Load: LC 6, M233 Shear Analysis Unity Check $0.866 > 1.0$	Pass
	Shear, $F_v$	147	170		
	Axial Compression, $F_c$	15	384		
Pile Cap Beam 14X14	Bending, $F_b$	391	1200	Governing Load: LC 4, M69 Shear Analysis Unity Check $0.974 > 1.0$	Pass
	Shear, $F_v$	166	170		
	Axial Compression, $F_c$	12	906		
Diagonal Braces 4X8	Bending, $F_b$		1,089	le/d is greater than 50.	Fail
	Shear, $F_v$		175		
	Axial Tension, $F_t$		810		
	Axial Compression, $F_t$		100		
Vertical Piles 13" $\Phi$	Bending, $F_b$	166	1200	Governing Load: LC 4, M21 Comb. Bending and Axial Compression Unity Check $1.952 > 1.0$	Fail
	Shear, $F_v$	36	170		
	Axial Compression, $F_c$	141	513		
Battered Piles 13" $\Phi$	Bending, $F_b$	196	1200	Governing Load: LC 3, M189 Comb. Bending and Axial Compression Unity Check $0.560 > 1.0$	Pass
	Shear, $F_v$	15	170		
	Axial Compression, $F_c$	7	629		

Table Notes:

1. Lift operating weight is assumed to be 19,000 lb. according to manufacturer's literature.
2. Maximum lift capacity is assumed to be 55,000 lb. according to manufacturer's literature.
3. Tabulated allowable loads are per NDS-15 by AF&PA.
4. Material is assumed to be Douglas Fir-Larch, No. 1 Grade or better, typical.
5. A non-mandatory reduction of between 10% and 15% has been applied to tabulated allowable loads in consideration of degradation of material by time and wear.

**Table 2: 15BFM- Structural Assembly Analysis Summary**

Model: 15BFM

Maximum Lateral Deflection

(in.): 1.035 @ Node N143, LC7

Member Type (Section Set)	Stress Description	Actual Stress in Governing member (psi)	Tabulated Allowable Stress (psi)	Description	Pass / Fail
Stringer-1 12X16	Bending, $F_b$	695	1,305	Governing Load: LC 6, M145 Comb. Bending and Axial Compression Unity Check $0.678 > 1.0$	Pass
	Shear, $F_v$	44	170		
	Axial Compression, $F_c$	11	749		
Stringer-2 6X16	Bending, $F_b$	457	1294	Governing Load: LC 6, M233 Comb. Bending and Axial Compression Unity Check $0.589 > 1.0$	Pass
	Shear, $F_v$	100	170		
	Axial Compression, $F_c$	10	384		
Pile Cap Beam 14X14	Bending, $F_b$	243	1200	Governing Load: LC 4, M69 Shear Analysis Unity Check $0.662 > 1.0$	Pass
	Shear, $F_v$	113	170		
	Axial Compression, $F_c$	8	906		
Diagonal Braces 4X8	Bending, $F_b$		1,089	le/d is greater than 50.	Fail
	Shear, $F_v$		175		
	Axial Tension, $F_t$		810		
	Axial Compression, $F_c$		100		
Vertical Piles 13" $\Phi$	Bending, $F_b$	113	1200	Governing Load: LC 4, M21 Comb. Bending and Axial Compression Unity Check $1.14 > 1.0$	Fail
	Shear, $F_v$	23	170		
	Axial Compression, $F_c$	98	513		
Battered Piles 13" $\Phi$	Bending, $F_b$	197	1200	Governing Load: LC 3, M189 Comb. Bending and Axial Compression Unity Check $0.437 > 1.0$	Pass
	Shear, $F_v$	11	170		
	Axial Compression, $F_c$	10	629		

Table Notes:

1. Lift operating weight is assumed to be 14,000 lb. according to manufacturer's literature.
2. Maximum lift capacity is assumed to be 33,000 lb. according to manufacturer's literature.
3. Tabulated allowable loads are per NDS-15 by AF&PA.
4. Material is assumed to be Douglas Fir-Larch, No. 1 Grade or better, typical.
5. A non-mandatory reduction of between 10% and 15% has been applied to tabulated allowable loads in consideration of degradation of material by time and wear.

**Table 3: 35BFMII- Structural Assembly Analysis Summary**

Model: 35BFMII

Maximum Lateral Deflection

(in.): 2.375 @ Node N143, LC7

Member Type (Section Set)	Stress Description	Actual Stress in Governing member (psi)	Tabulated Allowable Stress (psi)	Description	Pass / Fail
Stringer-1 12X16	Bending, $F_b$	1,475	1,305	Governing Load: LC 6, M145 Comb. Bending and Axial Compression Unity Check $1.45 > 1.0$	Fail
	Shear, $F_v$	91	170		
	Axial Compression, $F_c$	18	749		
Stringer-2 6X16	Bending, $F_b$	958	1294	Governing Load: LC 5, M234 Shear Analysis Unity Check $1.096 > 1.0$	Fail
	Shear, $F_v$	186	170		
	Axial Compression, $F_c$	26	384		
Pile Cap Beam 14X14	Bending, $F_b$	557	1200	Governing Load: LC 4, M69 Shear Analysis Unity Check $1.329 > 1.0$	Fail
	Shear, $F_v$	226	170		
	Axial Compression, $F_c$	17	906		
Diagonal Braces 4X8	Bending, $F_b$		1,089	le/d is greater than 50.	Fail
	Shear, $F_v$		175		
	Axial Tension, $F_t$		810		
	Axial Compression, $F_c$		100		
Vertical Piles 13" $\Phi$	Bending, $F_b$	57	1200	Governing Load: LC 7, M23 Comb. Bending and Axial Compression Unity Check $3.119 > 1.0$	Fail
	Shear, $F_v$	18	170		
	Axial Compression, $F_c$	225	337		
Battered Piles 13" $\Phi$	Bending, $F_b$	195	1200	Governing Load: LC 3, M189 Comb. Bending and Axial Compression Unity Check $0.71 > 1.0$	Pass
	Shear, $F_v$	21	170		
	Axial Compression, $F_c$	5	629		

Table Notes:

1. Lift operating weight is assumed to be 26,190 lb. according to manufacturer's literature.
2. Maximum lift capacity is assumed to be 77,000 lb. according to manufacturer's literature.
3. Tabulated allowable loads are per NDS-15 by AF&PA.
4. Material is assumed to be Douglas Fir-Larch, No. 1 Grade or better, typical.
5. A non-mandatory reduction of between 10% and 15% has been applied to tabulated allowable loads in consideration of degradation of material by time and wear.

Based on existing configuration, size, type and grade of materials, the most likely mode of failure in an overload scenario appear to be failure of the vertical piles when the Travelift is directly over the center of the pile, failing in combined bending and axial compression. The second most likely mode of failure seems to be the 12x16 stringer beams directly under the Travelift, also failing in combined bending and axial compression.

Note that impact loading from a vessel slipping in the slings is a high risk factor that has not been quantified. Such an impact load could lead to the dock collapsing.

Maximum lateral deflection (or “rocking”) of the dock occurs when the 35BFMII Travelift is directly over the seaward most bent, deflecting approximately 2.375in in one direction.

Note that the existing diagonal braces failed under all loading scenarios, this is due to the slenderness and unbraced lengths of the brace members between piles.

After all the results were tabulated for each Travelift, our next objective was to find the maximum load the Travelift could carry safely down the existing dock system before any of the dock components begin to fail. To do so, we ran iterations of the RISA-3D model using decreased maximum lifting capacities for the Travelift until the RISA-3D model demonstrated that the dock system could withstand all load scenarios in all locations.

## **Recommendations**

In order to maintain appropriate factors of safety against component failures, we recommend:

- The dock should be limited to 10 short ton or 20,000 lb lifts.
- An evaluation should be made of the demand for Travelift services and the fleet of potential vessels outlined. It is likely that a larger Travelift machine is required to service the market. It is likely that the reduced capacity of the dock has rendered the facility functionally and practically obsolete.
- If the facility is to be kept in service redesign of the diagonal braces, and their connection to the vertical piles is recommended. This redesign should consider the material slenderness, unbraced lengths, work-point along piles to minimize eccentricities and repair of any damaged or missing braces.
- If the facility is to be kept in service redesign of the timber decking and or adding blocking in between stringers, to create a diaphragm that better transfers lateral loads uniformly through the dock system is recommended.

## Whittier Harbor Maintenance Zone

**Purpose:** To make available an area for vessels owners/operators to haul out boats for minor maintenance and/or inspection.

**Discussion:** It has been raised that with the discontinued use of the Travel lift and boat yard on the City of Whittier property there remains a need for routine maintenance to be conducted on vessels. The request by Harbor users is to create a space designated for vessels to be hauled from the water via appropriate trailer for light maintenance and inspection.

**Action:** An area has been identified and marked off at the top of the launch ramp along the northern edge of the harbor launch ramp haul out. This area is to be used by reservation only during nonpeak hours through the Harbor Office. The fee will be \$25.00 per use, no more than 5 hours per vessel. If multiple users request space at the same time, scheduling conflicts shall be resolved via the Harbormaster prior to work commencing on any vessels.

**Permissible Use:** The following maintenance will be authorized in the designated space:

- Oil Change
- Lower unit fluid change
- Zinc/Anode replacement
- Propeller/Lower Unit replacement

**Owner/Operator Requirements:** Users will be required to place a protective tarp under the work area and have on hand a supply of sorbent pads to keep liquids from the paved surface and parking lot drains. Users will be required to remove all fluids, zincs, anodes, and trash from the area and dispose/recycle in the appropriate container.

**ABSOLUTLY NO BOTTOM CLEANING, PRESSURE WASHING OR PAINTING WILL BE AUTHORIZED IN THIS AREA.** Any work of this nature must be coordinated with a local marine service provider.



## 2021 WHITTIER FEE SCHEDULE



### ALL DEPARTMENTS

\* means any applicable taxes are included

SERVICE	DESCRIPTION	RATE	W/TAX	2022 Proposed	PER
Bad Check (NSF)		\$ 30.00		No Change	Each NSF *
Copies 8.5" x 11"	per page / per side	\$ 0.25		No Change	Each Page *
Color Copies 8.5" x 11"	per page / per side	\$ 1.00		No Change	Each Page *
Copies 8.5" x 14"	per page / per side	\$ 0.35		No Change	Each Page *
Color Copies 11" x 17"	per page / per side	\$ 1.50		No Change	Each Page *
CDs	Electronic files provided on CD	\$ 5.00		No Change	Each CD *
DVDs	Electronic files provided on DVD	\$ 10.00		No Change	Each DVD *
Emailed electronic records	electronic files provided by email	\$ 5.00		No Change	Each email *
Fax 1st Page	First page	\$ 1.50		No Change	Each *
Fax Each Additional Page	Additional Pages	\$ 0.50		No Change	Each Page *
Labor Fee	1 hr Per Staff min.	\$ 75.00	\$ 78.75	No Change	Hour
Labor Overtime fee (or after Hours)	2 hr Per Staff min. (if call out)	\$ 112.50	\$ 118.13	No Change	Hour
Labor Holiday Pay	2 hr Per Staff min. (if call out)	\$ 150.00	\$ 157.50	No Change	Hour
Notary	per document	\$ 10.00		City Clerk Fee	Each Stamp *

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### HARBOR

SERVICE	DESCRIPTION	RATE	W/TAX	2022 Proposed	PER
Preferential Moorage	JAN through DEC	\$ 67.13		\$70.49	ft./year *
Annual Transient Moorage (For Qualifying Patrons)	JAN through DEC	\$ 67.13		\$70.49	ft./year *
Transient Moorage (Summer Rate)	Daily	\$ 1.12	\$ 1.18	\$1.18	ft./day
Transient Moorage (Summer Rate)	Monthly (Eff. Apr 1 - Sept. 30)	\$ 21.83	\$ 22.92	\$16.07	ft./monthly
Transient Moorage (Winter)	Eff Oct 1 - March 31	\$ 45.00		\$47.25	ft./season *
Boat Lift - Short	<del>1 hr min</del>	<del>\$ 305.49</del>	<del>\$ 320.76</del>	Remove	<del>1 hr</del>
Boat Lift - Normal	<del>1 hr min</del>	<del>\$ 274.89</del>	<del>\$ 288.63</del>	Remove	<del>1 hr</del>
Boat Lift - Rail Car Lift	<del>1 hr min</del>	<del>\$ 356.49</del>	<del>\$ 374.31</del>	Remove	<del>1 hr</del>
Each Additional 1/2 hour		<del>\$ 102.00</del>	<del>\$ 107.10</del>	Remove	<del>1/2 hr</del>
Launch Ramp (Rec/Comm Fishing)	Round Trip	\$ 20.00	\$ 20.00	No Change	Each *
Launch Ramp (Rec/Comm Fishing)	Annual Launch Permit	\$ 160.00	\$ 160.00	No Change	Year *
Launch Ramp Commercial Use	Annual Permit	\$ 500.00	\$ 500.00	No Change	Year *
Launch Ramp Freight Landing Fee	Each Use	\$ 125.00	\$ 125.00	No Change	Each Time *
Wharfage	Freight (per ton)	\$ 14.29	\$ 15.00	No Change	Ton
Wharfage	Raw Fish (per ton)	\$ 19.05	\$ 20.00	No Change	Ton
Delong Dock Wharfage - Freight	Freight (Per pounds)	\$ 0.03	\$ 0.04	No Change	LBS
Delong Dock Wharfage - Raw Fish	Raw Fish (Per pounds)	\$ 0.025	\$ 0.03	No Change	LBS

Hoist	Min. 1 hr	\$	41.50	\$	43.58	No Change	1 hr
Grid	Per Foot per Tide	\$	2.42	\$	2.54	No Change	ft./tide
<b>STORAGE / MAINTENANCE</b>							
Dry Storage --- Winter, Per Ft./Month	Vessel (Oct 1-April 1)	\$	4.00			No Change	ft./Month *
Dry Storage -- Winter, Per Day	Vessel (Oct 1-April 1)	\$	6.00			No Change	Day *
Boat Maintenance (5 hours)	Vessel			\$40.50		\$25.00	5 Hour Max
Boat Maintenance (Starting day 8)	Vessel (Apr 1-Sept 30)			\$ 21.00		Remove	Day
Dry Storage --- Clean Up Fee	Clean-up fee (min. 1 hour)	\$	75.00	\$ 78.75		Remove	per hour
<b>PARKING (daily rates are midnight-midnight) [Kiosk or MacKay Pay App]</b>							
Single Vehicle Parking (up to 24ft.) No campers	Daily - flat rate per day	\$	11.00			No Change	Day *
Parking (January Through December) Per Car	Annual - Flat rate per year	\$	250.00			Discussion Needed	Year *
Parking - Truck & Trailer (when available)	Daily - flat rate per day	\$	22.00			No Change	Day *
						No Change	
KWH		\$	0.16	\$	0.17	No Change	Per KWH
Monthly Service Charge	Only if elec. Used	\$	13.20	\$	13.86	No Change	Monthly
Unmetered Electric		\$	12.00	\$	12.60	No Change	Day
<b>USED OIL AND WATER COLLECTION FEES</b>							
Absorbent Pads	Each	\$	2.25	\$	2.36	No Change	Each
Pure Used Oil (no solvents)	Per Gallon	\$	1.60	\$	1.68	Remove	Gallon
Used Oil and Water	Per Gallon	\$	3.50	\$	3.68	Remove	Gallon
Used Glycerol	Per Gallon	\$	2.00	\$	2.10	Remove	Gallon
Fuel (Diesel, Jet Fuel, Heating)	Per Gallon	\$	2.50	\$	2.63	Remove	Gallon
<b>CAMPING (rates are noon-noon) [Kiosk or MacKay Pay App]</b>							
Tent Site + Vehicle	Primitive w/fire ring	\$	11.00			No Change	Day *
Tent Site + Vehicle (Week)	Primitive w/fire ring	\$	65.00			No Change	Week (7days) *
RV/Trailer/Motorhome	Primitive w/fire ring	\$	20.00			No Change	Day *
RV/Trailer/Motorhome (Week)	Primitive w/fire ring	\$	120.00			No Change	Week (7days) *
<b>MISCELLANEOUS</b>							
Late Fee	.875% of unpaid balance		0.00875			No Change	Per Month *
Ower/Agent Assist		\$	75.00	\$	78.75	No Change	Hour
Bilge Pump Out	Min. 1 hour	\$	75.00	\$	78.85	No Change	Hour
Emergency snow removal	Each occurrence	\$	250.00			No Change	Each
Sewer Pump Out		\$	10.00	\$	10.50	No Change	Each
Bilge Pump Rental	Min. 1 hour	\$	40.00	\$	42.00	No Change	Hour
Shower		\$	4.76	\$	5.00	No Change	Time
Tow (boat rate)(plus labor charged per hour)	min. 1 hour, Plus labor	\$	75.00	\$	78.75	No Change	Hour
Harbor Wait List		\$	50.00			No Change	Year *

PUBLIC WORKS

All Equipment and Vehicles will be billed at current Blue Book Rates.	
All Labor will be billed at applicable City rates (see All Departments).	

PUBLIC SAFETY					
SERVICE	DESCRIPTION	RATE	W/TAX		PER
Requests for Police Records on paper		\$ 20.00	\$ 21.00		Each
Request for accident report on paper		\$ 20.00	\$ 21.00		Each
Civil Paper Service		\$ 50.00	\$ 52.50		Each
Records or reports on CD		\$ 20.00	\$ 21.00		Each
Records or reports on DVD		\$ 25.00	\$ 26.25		Each
Burn Permit - One Time		\$ 25.00	\$ 26.25		Each
Burn Permit - Commercial		\$ 100.00	\$ 105.00		Each
First Aid/CPR Class		\$ 50.00	\$ 52.50		Each
All Equipment and Vehicles will be billed at current Blue Book Rates.					
All Labor will be billed at applicable City rates (see All Departments).					

\*~~10~~1 Boat must remain on trailer. Work limited



## 2021 WHITTIER FEE SCHEDULE



### ALL DEPARTMENTS

\* means any applicable taxes are included

SERVICE	DESCRIPTION	RATE	W/TAX	PER
Bad Check (NSF)		\$ 30.00		Each NSF *
Copies 8.5" x 11"	per page / per side	\$ 0.25		Each Page *
Color Copies 8.5" x 11"	per page / per side	\$ 1.00		Each Page *
Copies 8.5" x 14"	per page / per side	\$ 0.35		Each Page *
Color Copies 11" x 17"	per page / per side	\$ 1.50		Each Page *
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Emailed electronic records	electronic files provided by email	\$ 5.00		Each email *
Fax 1st Page	First page	\$ 1.50		Each *
Fax Each Additional Page	Additional Pages	\$ 0.50		Each Page *
Labor Fee	1 hr Per Staff min.	\$ 75.00	\$ 78.75	Hour
Labor Overtime fee (or after Hours)	2 hr Per Staff min. (if call out)	\$ 112.50	\$ 118.13	Hour
Labor Holiday Pay	2 hr Per Staff min. (if call out)	\$ 150.00	\$ 157.50	Hour
Notary	per document	\$ 10.00		Each Stamp *

### HARBOR

SERVICE	DESCRIPTION	RATE	W/TAX	PER
Preferential Moorage	JAN through DEC	\$ 67.13		ft./year *
Annual Transient Moorage(For Qualifying Patrons)	JAN through DEC	\$ 67.13		ft./year *
Transient Moorage (Summer Rate)	Daily	\$ 1.12	\$ 1.18	ft./day
Transient Moorage (Summer Rate)	Monthly (Eff. Apr 15 - Sept. 30)	\$ 15.30	\$ 16.07	ft./monthly
Transient Moorage (Winter)	SEPT 16 to APR 15	\$ 45.00		ft./season *
Boat Lift - Short	1 hr min	\$ 305.49	\$ 320.76	1 hr
Boat Lift - Normal	1 hr min	\$ 274.89	\$ 288.63	1 hr
Boat Lift - Rail Car Lift	1 hr min	\$ 356.49	\$ 374.31	1 hr
Each Additional 1/2 hour		\$ 102.00	\$ 107.10	1/2 hr
Launch Ramp	Round Trip	\$ 20.00	\$ 20.00	Each *
Launch Ramp (Recreational/Pleasure)	Annual Launch Permit	\$ 160.00	\$ 160.00	Year *
Launch Ramp (Smitty's Cove Commercial Launch)	Annual Permit	\$ 500.00	\$ 500.00	Year *
Launch Ramp (Smitty's Cove Freight Landing Fee)	Each Use	\$ 125.00	\$ 125.00	Each Time *
Wharfage	Freight (per ton)	\$ 14.29	\$ 15.00	Ton
Wharfage	Raw Fish (per ton)	\$ 19.05	\$ 20.00	Ton
Delong Dock Wharfage - Freight	Freight (Per pounds)	\$ 0.03	\$ 0.04	LBS
Delong Dock Wharfage - Raw Fish	Raw Fish (Per pounds)	\$ 0.025	\$ 0.03	LBS
Hoist	Min. 1 hr	\$ 41.50	\$ 43.58	1 hr
Grid	Per Foot per Tide	\$ 2.42	\$ 2.54	ft./tide
<b>STORAGE / MAINTENACE</b>				
Dry Storage -- Winter, Per Ft/Month	Vessel (Oct 1-March 31)	\$ 4.00		ft./Month *
Dry Storage -- Winter, Per Day	Vessel (Oct 1-March 31)	\$ 6.00		Day *
Boat Maintenance (Day 1-7)	Vessel (Apr 1-Sept 30)		\$ 10.50	Day
Boat Maintenance (Starting day 8)	Vessel (Apr 1-Sept 30)		\$ 21.00	Day
Dry Storage -- Clean Up Fee	Clean up fee (min. 1 hour)	\$ 75.00	\$ 78.75	per hour
<b>PARKING (daily rates are midnight-midnight) [Kiosk or MacKay Pay App]</b>				
Single Vehicle Parking (up to 24ft.) No campers	Daily - flat rate per day	\$ 11.00		Day *
Parking (January Through December) Per Car	Annual - Flat rate per year	\$ 250.00		Year *
Parking - Truck & Trailer (when available)	Daily - flat rate per day	\$ 22.00		Day *

KWH		\$ 0.16	\$ 0.17	Per KWH
Monthly Service Charge	Only if elec. Used	\$ 13.20	\$ 13.86	Monthly
Unmetered Electric		\$ 12.00	\$ 12.60	Day
<b>USED OIL AND WATER COLLECTION FEES</b>				
Absorbent Pads	Each	\$ 2.25	\$ 2.36	Each
Pure Used Oil (no solvents)	Per Gallon	\$ 1.60	\$ 1.68	Gallon
Used Oil and Water	Per Gallon	\$ 3.50	\$ 3.68	Gallon
Used Glycol	Per Gallon	\$ 2.00	\$ 2.10	Gallon
Fuel (Diesel, Jet Fuel, Heating)	Per Gallon	\$ 2.50	\$ 2.63	Gallon
<b>CAMPING (rates are noon-noon) [Kiosk or MacKay Pay App]</b>				
Tent Site + Vehicle	Primitive w/fire ring	\$ 11.00		Day *
Tent Site + Vehicle (Week)	Primitive w/fire ring	\$ 65.00		Week (7days) *
RV/Trailer/Motorhome	Primitive w/fire ring	\$ 20.00		Day *
RV/Trailer/Motorhome (Week)	Primitive w/fire ring	\$ 120.00		Week (7days) *
<b>MISCELLANEOUS</b>				
Late Fee	.875% of unpaid balance	0.00875		Per Month *
Ower/Agent Assist		\$ 75.00	\$ 78.75	Hour
Bilge Pump Out	Min. 1 hour	\$ 75.00	\$ 78.85	Hour
Emergency snow removal	Each occurrence	\$ 250.00		Each
Sewer Pump Out		\$ 10.00	\$ 10.50	Each
Bilge Pump Rental	Min. 1 hour	\$ 40.00	\$ 42.00	Hour
Shower		\$ 4.76	\$ 5.00	Time
Tow (boat rate)(plus labor charged per hour)	min. 1 hour, Plus labor	\$ 75.00	\$ 78.75	Hour
Harbor Wait List		\$ 50.00		Year *

## PUBLIC WORKS

**All Equipment and Vehicles will be billed at current Blue Book Rates.**

**All Labor will be billed at applicable City rates (see All Departments).**

## PUBLIC SAFETY

SERVICE	DESCRIPTION	RATE	W/TAX	PER
Requests for Police Records on paper		\$ 20.00	\$ 21.00	Each
Request for accident report on paper		\$ 20.00	\$ 21.00	Each
Civil Paper Service		\$ 50.00	\$ 52.50	Each
Records or reports on CD		\$ 20.00	\$ 21.00	Each
Records or reports on DVD		\$ 25.00	\$ 26.25	Each
Burn Permit - One Time		\$ 25.00	\$ 26.25	Each
Burn Permit - Commercial		\$ 100.00	\$ 105.00	Each
First Aid/CPR Class		\$ 50.00	\$ 52.50	Each

**All Equipment and Vehicles will be billed at current Blue Book Rates.**

**All Labor will be billed at applicable City rates (see All Departments).**